

the revision of this chapter by section 203(a) of Pub. L. 98-473.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-646, §55(a), (b), substituted “authorized to order the arrest of a person under section 3041 of this title before whom an arrested person is brought shall order that such person be released” for “who is authorized to order the arrest of a person pursuant to section 3041 of this title shall order that an arrested person who is brought before him be released” and “under this chapter” for “pursuant to the provisions of this chapter”.

Subsec. (b). Pub. L. 99-646, §55(a), substituted “under this chapter” for “pursuant to the provisions of this chapter”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-646, §55(j), Nov. 10, 1986, 100 Stat. 3611, provided that: “The amendments made by this section [amending this section and sections 3142 to 3144, 3146 to 3148, and 3156 of this title] shall take effect 30 days after the date of enactment of this Act [Nov. 10, 1986].”

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-458, title VI, §6951, Dec. 17, 2004, 118 Stat. 3775, provided that: “This subtitle [subtitle K (§§6951, 6952) of title VI of Pub. L. 108-458, amending section 3142 of this title] may be cited as the ‘Pretrial Detention of Terrorists Act of 2004’.”

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-647, title IX, §901, Nov. 29, 1990, 104 Stat. 4826, provided that: “This title [amending sections 3143 and 3145 of this title] may be cited as the ‘Mandatory Detention for Offenders Convicted of Serious Crimes Act’.”

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-473, title II, §202, Oct. 12, 1984, 98 Stat. 1976, provided that: “This chapter [chapter I (§§202-210) of title II of Pub. L. 98-473, enacting sections 3062 and 3141 to 3150 of this title, amending sections 3041, 3042, 3154, 3156, 3731, 3772, and 4282 of this title and section 636 of Title 28, Judiciary and Judicial Procedure, repealing sections 3043 and 3141 to 3151 of this title, and amending rules 5, 15, 40, 46, and 54 of the Federal Rules of Criminal Procedure, set out in the Appendix to this title, and rule 9 of the Federal Rules of Appellate Procedure, set out in the Appendix to Title 28] may be cited as the ‘Bail Reform Act of 1984’.”

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-267, §1, Sept. 27, 1982, 96 Stat. 1136, provided: “That this Act [amending sections 3152 to 3155 of this title and section 604 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 3141 and 3152 of this title] may be cited as the ‘Pretrial Services Act of 1982’.”

SHORT TITLE

Pub. L. 89-465, §1, June 22, 1966, 80 Stat. 214, provided: “That this Act [enacting sections 3146 to 3152 of this title, amending sections 3041, 3141 to 3143, and 3568 of this title, and enacting provisions set out as a note below] may be cited as the ‘Bail Reform Act of 1966’.”

PURPOSE OF BAIL REFORM ACT OF 1966

Pub. L. 89-465, §2, June 22, 1966, 80 Stat. 214, provided that: “The purpose of this Act [enacting sections 3146 to 3152 of this title, amending sections 3041, 3141 to 3143, and 3568 of this title and enacting provisions set out as a note above] is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending ap-

pear, when detention serves neither the ends of justice nor the public interest.”

§ 3142. Release or detention of a defendant pending trial

(a) IN GENERAL.—Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—

- (1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;
- (2) released on a condition or combination of conditions under subsection (c) of this section;
- (3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or
- (4) detained under subsection (e) of this section.

(b) RELEASE ON PERSONAL RECOGNIZANCE OR UNSECURED APPEARANCE BOND.—The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a),¹ unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) RELEASE ON CONDITIONS.—(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a);¹ and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

- (i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

¹ See References in Text note below.

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title, or a failure to register offense under section 2250 of this title, any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) TEMPORARY DETENTION TO PERMIT REVOCATION OF CONDITIONAL RELEASE, DEPORTATION, OR EXCLUSION.—If the judicial officer determines that—

(1) such person—

(A) is, and was at the time the offense was committed, on—

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

(2) such person may flee or pose a danger to any other person or the community;

such judicial officer shall order the detention of such person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take such person into custody during that period, such person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, such person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e) DETENTION.—(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and

(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the

offense described in subparagraph (A), which ever is later.

(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed—

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) an offense under section 924(c), 956(a), or 2332b of this title;

(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;

(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or

(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

(f) DETENTION HEARING.—The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community—

(1) upon motion of the attorney for the Government, in a case that involves—

(A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion in a case, that involves—

(A) a serious risk that such person will flee; or

(B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

(g) FACTORS TO BE CONSIDERED.—The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in

the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) CONTENTS OF RELEASE ORDER.—In a release order issued under subsection (b) or (c) of this section, the judicial officer shall—

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of—

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) CONTENTS OF DETENTION ORDER.—In a detention order issued under subsection (e) of this section, the judicial officer shall—

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) PRESUMPTION OF INNOCENCE.—Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(Added Pub. L. 98-473, title II, §203(a), Oct. 12, 1984, 98 Stat. 1976; amended Pub. L. 99-646, §§55(a), (c), 72, Nov. 10, 1986, 100 Stat. 3607, 3617; Pub. L. 100-690, title VII, §7073, Nov. 18, 1988, 102 Stat. 4405; Pub. L. 101-647, title X, §1001(b), title XXXVI, §§3622-3624, Nov. 29, 1990, 104 Stat. 4827, 4965; Pub. L. 104-132, title VII, §§702(d), 729, Apr. 24, 1996, 110 Stat. 1294, 1302; Pub. L. 108-21, title II, §203, Apr. 30, 2003, 117 Stat. 660; Pub. L. 108-458, title VI, §6952, Dec. 17, 2004, 118 Stat. 3775; Pub. L. 109-162, title X, §1004(b), Jan. 5, 2006, 119 Stat. 3085; Pub. L. 109-248, title II, §216, July 27, 2006, 120 Stat. 617; Pub. L. 109-304, §17(d)(7), Oct. 6, 2006, 120 Stat. 1707; Pub. L. 110-457, title II, §§222(a), 224(a), Dec. 23, 2008, 122 Stat. 5067, 5072.)

Editorial Notes

REFERENCES IN TEXT

Section 3 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsecs. (b) and (c)(1)(A), is section 3 of Pub. L. 106-546, which was classified to section 14135a of Title 42, The Public Health and Welfare, prior to editorial reclassification as section 40702 of Title 34, Crime Control and Law Enforcement.

The Controlled Substances Act, referred to in subsecs. (e) and (f)(1)(C), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsecs. (e) and (f)(1)(C), is title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

PRIOR PROVISIONS

A prior section 3142, acts June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89-465, §5(c), 80 Stat. 217, set forth provisions relating to surrender by bail, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98-473.

AMENDMENTS

2008—Subsec. (e). Pub. L. 110-457, §222(a)(1)-(4), designated first through third sentences as pars. (1) to (3), respectively, and redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (2).

Subsec. (e)(2)(B), (C). Pub. L. 110-457, §222(a)(5), substituted "subparagraph (A)" for "paragraph (1) of this subsection".

Subsec. (e)(3). Pub. L. 110-457, §222(a)(6), substituted "committed—" for "committed", "46," for "46.", "title;" for "title, or", and "10 years or more is prescribed;" for "10 years or more is prescribed or", inserted subpar. (A), (B), (C), and (E) designations, and added subpar. (D).

Subsecs. (f)(1)(A), (g)(1). Pub. L. 110-457, §224(a), substituted "violence, a violation of section 1591," for "violence,".

2006—Subsecs. (b), (c)(1)(A). Pub. L. 109-162 inserted “and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a)” after “period of release”.

Subsec. (c)(1)(B). Pub. L. 109-248, §216(1), inserted concluding provisions.

Subsecs. (e), (f)(1)(C). Pub. L. 109-304 substituted “chapter 705 of title 46” for “the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)”.

Subsec. (f)(1)(E). Pub. L. 109-248, §216(2), added subpar. (E).

Subsec. (g)(1). Pub. L. 109-248, §216(3), added par. (1) and struck out former par. (1) which read as follows: “the nature and circumstances of the offense charged, including whether the offense is a crime of violence, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed or involves a narcotic drug;”.

2004—Subsec. (e). Pub. L. 108-458, §6952(1), in concluding provisions, inserted “or” before “the Maritime” and “or an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed” after “or 2332b of this title.”.

Subsecs. (f)(1)(A), (g)(1). Pub. L. 108-458, §6952(2), inserted “, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed” after “violence”.

2003—Subsec. (e). Pub. L. 108-21, in concluding provisions, substituted “1901 et seq.” for “1901 et seq.”, or” and “of this title, or an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title” for “of title 18 of the United States Code”.

1996—Subsec. (e). Pub. L. 104-132, §702(d), inserted “, 956(a), or 2332b” after “section 924(c)” in concluding provisions.

Subsec. (f). Pub. L. 104-132, §729, in concluding provisions, inserted “(not including any intermediate Saturday, Sunday, or legal holiday)” after “five days” and after “three days”.

1990—Subsec. (c)(1)(B)(xi). Pub. L. 101-647, §3622, amended cl. (xi) generally. Prior to amendment, cl. (xi) read as follows: “execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or such percentage of the money as the judicial officer may specify;”.

Subsec. (c)(1)(B)(xii). Pub. L. 101-647, §3623, amended cl. (xii) generally. Prior to amendment, cl. (xii) read as follows: “execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the person as required;”.

Subsecs. (e), (f)(1)(C). Pub. L. 101-647, §1001(b), substituted “the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)” for “section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)”.

Subsec. (g)(4). Pub. L. 101-647, §3624, substituted “subsection (c)(1)(B)(xi) or (c)(1)(B)(xii)” for “subsection (c)(2)(K) or (c)(2)(L)”.

1988—Subsec. (c)(3). Pub. L. 100-690 substituted “the order” for “order”.

1986—Subsec. (a). Pub. L. 99-646, §55(a), (c)(1), in par. (1) struck out “his” after “released on” and substituted “under subsection (b) of this section” for “pursuant to the provisions of subsection (b)”, in par. (2) substituted “under subsection (c) of this section” for “pursuant to the provisions of subsection (c)”, in par. (3) substituted “under subsection (d) of this section” for “pursuant to provisions of subsection (d)”, and in par. (4) substituted “under subsection (e) of this section” for “pursuant to provisions of subsection (e)”.

Subsec. (b). Pub. L. 99-646, §55(c)(2), struck out “his” after “person on” and “period of”.

Subsec. (c). Pub. L. 99-646, §55(c)(3), designated existing provision as par. (1) and redesignated former pars. (1) and (2) as subpars. (A) and (B), in provision preceding subpar. (A) substituted “subsection (b) of this section” for “subsection (b)” and “such judicial officer” for “he”, in subpar. (B) redesignated subpars. (A) to (N) as cls. (i) to (xiv), in provision preceding cl. (i) substituted “such judicial officer” for “he”, in cl. (i) substituted “assume supervision” for “supervise him”, in cl. (iv) substituted “on personal” for “on his personal”, in cl. (x) substituted “medical, psychological,” for “medical”, designated provision relating to the judicial officer not imposing a financial condition that results in the pretrial detention of a person as par. (2), and designated provision permitting the judicial officer to impose at any time additional or different conditions of release as par. (3), and in par. (3) struck out “his” after “amend”.

Subsec. (d). Pub. L. 99-646, §55(c)(4), in pars. (1) and (2) substituted “such person” for “the person” and in concluding provisions substituted “such person” for “the person” in four places, “such judicial officer” for “he”, “paragraph (1)(B) of this subsection” for “paragraph (1)(B)”, and “such person’s United States citizenship or lawful admission” for “that he is a citizen of the United States or is lawfully admitted”.

Subsec. (e). Pub. L. 99-646, §55(c)(5), in introductory provisions inserted “of this section” after “subsection (f)” and substituted “such judicial officer” for “he”, “before” for “prior to”, “described in subsection (f)(1) of this section” for “described in (f)(1)”, and “if such judicial officer” for “if the judge”, in par. (1) inserted “of this section” after “subsection (f)(1)” in two places, and in pars. (2) and (3) inserted “of this section” after “paragraph (1)”.

Subsec. (f). Pub. L. 99-646, §72, in par. (1)(D) substituted “any felony if the person has been convicted of two or more offenses” for “any felony committed after the person had been convicted of two or more prior offenses” and inserted “, or a combination of such offenses”, in par. (2)(A) inserted “or” after “flee;”, and in concluding provisions, inserted provision permitting the hearing to be reopened at any time before trial if the judicial officer finds that information exists that was unknown to the movant at the time of the hearing and that has a material bearing on whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

Pub. L. 99-646, §55(c)(6), substituted “such person” for “the person” wherever appearing, in introductory provision inserted “of this section” after “subsection (c)” and struck out “in a case” after “community”, in par. (1) inserted “in a case” and in subpar. (D) of par. (1) inserted “of this paragraph” in two places, in par. (2) substituted “upon” for “Upon” and inserted “in a case”, and in concluding provisions, substituted “sua sponte” for “on his own motion”, “whether such person is an addict” for “whether he is an addict”, and “financially” for “he is financially”, and struck out “for him” after “appointed” and “on his own behalf” after “witnesses”.

Subsec. (g). Pub. L. 99-646, §55(c)(7), in par. (3)(A) substituted “the person’s” for “his”, in par. (3)(B) substituted “the person” for “he”, and in par. (4) inserted “of this section”.

Subsec. (h). Pub. L. 99-646, §55(a), (c)(8), in introductory provision substituted “under” for “pursuant to the provisions of” and inserted “of this section” and in par. (2)(C) struck out “the provisions of” before “sections 1503”.

Subsec. (i). Pub. L. 99-646, §55(a), (c)(9), in introductory provision substituted “under” for “pursuant to the provisions of” and inserted “of this section” and in par. (3) struck out “his” after “consultation with”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by sections 3622 to 3624 of Pub. L. 101-647 effective 180 days after Nov. 29, 1990, see section 3631 of

Pub. L. 101-647, set out as an Effective Date note under section 3001 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1986 AMENDMENT

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

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 Title 8, Aliens and Nationality.

§ 3143. Release or detention of a defendant pending sentence or appeal

(a) RELEASE OR DETENTION PENDING SENTENCE.—(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence, other than a person for whom the applicable guideline promulgated pursuant to 28 U.S.C. 994 does not recommend a term of imprisonment, be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c). If the judicial officer makes such a finding, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c).

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless—

(A)(i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

(b) RELEASE OR DETENTION PENDING APPEAL BY THE DEFENDANT.—(1) Except as provided in paragraph (2), the judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds—

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—

(i) reversal,

(ii) an order for a new trial,

(iii) a sentence that does not include a term of imprisonment, or

(iv) a reduced sentence to a term of imprisonment less than the total of the time al-

ready served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title, except that in the circumstance described in subparagraph (B)(iv) of this paragraph, the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence.

(2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained.

(c) RELEASE OR DETENTION PENDING APPEAL BY THE GOVERNMENT.—The judicial officer shall treat a defendant in a case in which an appeal has been taken by the United States under section 3731 of this title, in accordance with section 3142 of this title, unless the defendant is otherwise subject to a release or detention order. Except as provided in subsection (b) of this section, the judicial officer, in a case in which an appeal has been taken by the United States under section 3742, shall—

(1) if the person has been sentenced to a term of imprisonment, order that person detained; and

(2) in any other circumstance, release or detain the person under section 3142.

(Added Pub. L. 98-473, title II, §203(a), Oct. 12, 1984, 98 Stat. 1981; amended Pub. L. 98-473, title II, §223(f), Oct. 12, 1984, 98 Stat. 2028; Pub. L. 99-646, §§51(a), (b), 55(a), (d), Nov. 10, 1986, 100 Stat. 3605-3607, 3609; Pub. L. 100-690, title VII, §7091, Nov. 18, 1988, 102 Stat. 4410; Pub. L. 101-647, title IX, §902(a), (b), title X, §1001(a), Nov. 29, 1990, 104 Stat. 4826, 4827; Pub. L. 102-572, title VII, §703, Oct. 29, 1992, 106 Stat. 4515.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3143, acts June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89-465, §5(d), 80 Stat. 217, related to additional bail, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98-473.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-572 substituted “subparagraph (B)(iv) of this paragraph” for “paragraph (b)(2)(D)”.

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

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

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

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