

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>

Editorial Notes

AMENDMENTS

2006—Pub. L. 109-248, title III, §302(1), July 27, 2006, 120 Stat. 619, inserted "or to undergo postrelease pro-

<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.

ceedings" 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 Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence 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, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial or other proceedings. Upon discharge, the defendant is subject to the provisions of chapters 207 and 227.

(f) ADMISSIBILITY OF FINDING OF COMPETENCY.—A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged.

(June 25, 1948, ch. 645, 62 Stat. 855; Pub. L. 98-473, title II, §403(a), Oct. 12, 1984, 98 Stat. 2057; Pub. L. 109-248, title III, §302(2), July 27, 2006, 120 Stat. 619.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §876 (May 13, 1930, ch. 254, §6, 46 Stat. 271).

Changes were made in phraseology and surplusage omitted.

Editorial Notes

AMENDMENTS

2006—Pub. L. 109-248, §302(2)(A), inserted "to undergo postrelease proceedings" after "trial" in section catchline.

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