

CRIMINAL JUDICIAL ADMINISTRATION ACT OF 2020

SEPTEMBER 24, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 8124]

The Committee on the Judiciary, to whom was referred the bill (H.R. 8124) to amend title 18, United States Code, to provide for transportation and subsistence for criminal justice defendants, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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Purpose and Summary

H.R. 8124, the “Criminal Judicial Administration Act of 2020,” would amend current law to give courts the discretion, in the interest of justice, to order the U.S. Marshals Service (USMS) to furnish, when financially necessary, transportation and subsistence expenses (lodging and food) for released defendants to return home from court proceedings, and subsistence while attending such proceedings. The bill would also amend current law to grant mag-

istrate judges the authority to rule on post-judgment motions in cases for which they had trial jurisdiction.

Background and Need for the Legislation

A. Amendments re. Transportation and Subsistence Funding

Section 4285 of Title 18 currently authorizes courts to order the U.S. Marshals Service to provide a released defendant with non-custodial transportation and subsistence expenses during travel to the court where the defendant's appearance is required, when the interests of justice would be served and the defendant is financially unable to pay his or her transportation costs.¹ At the present time, the statute does not clearly provide for subsistence expenses during a court proceeding, nor does it cover the cost of the defendant's return trip home.² H.R. 8124 would give the court discretion to order the USMS to furnish, when financially necessary, roundtrip transportation and subsistence expenses (i.e., lodging and food) to out-of-custody defendants attending court proceedings.

When a defendant is detained, the USMS is responsible for the cost of housing and the cost of transporting defendants to and from court. The cost to the USMS (and to taxpayers) of furnishing transportation and subsistence expenses related to court proceedings for an out-of-custody defendant is significantly less than what the cost would be of incarcerating that defendant from the time of their arrest through the disposition of their case.

Most pretrial defendants are incarcerated pending the outcome of their cases. And the vast majority of those who are released either have funds available or live sufficiently close to the federal courthouse where their case is being heard, such that they do not need reimbursement for transportation or subsistence expenses. But for indigent or financially needy non-custodial defendants who do not live near the courthouse where their case is being heard, courts have long struggled with the practical problem of how to provide lodging, meals, and transportation home during and after court appearances.

In some instances, courts have directed the use of funds from U.S. Pretrial Services or the Criminal Justice Act, but, as at least one court has stated, the justification for use of such funds is "admittedly tortured."³ In fact, the Judicial Conference of the United States has been calling for an amendment such as H.R. 8124 for years, given that there is no "clear statutory authority" for courts to order lodging and return transportation for out-of-custody defendants, in connection with their court proceedings and having "to pay for [return] travel and subsistence . . . has resulted in substantial hardships to certain defendants."⁴ The proposed amendment to section 4285 would take up a long-standing recommendation of the Judicial Conference and clarify the assignment of responsibility for the costs at issue; costs would be paid by the USMS, but only if a judge determines it is necessary in the interest of justice.

¹ 18 U.S.C. § 4285.

² See *id.*

³ *United States v. Mendoza*, 734 F.Supp.2d 281, 286 (E.D.N.Y. 2010).

⁴ See *Mendoza*, 734 F.Supp.2d 287 (quoting a March 1993 Report of the Judicial Conference of the United States on Federal Defender Program) (alterations in original).

B. Amendments re. Effective Use of Magistrate Judges

Under 28 U.S.C. § 636(a)(3) and 18 U.S.C. § 3401, magistrate judges have authority to preside over cases involving persons accused of misdemeanors, through trial and sentencing.⁵ In a case involving a Class A misdemeanor, a defendant has a right to trial by jury before a district judge and, therefore, the defendant's consent is required for a magistrate judge to exercise trial jurisdiction, either in writing or orally and on the record.⁶ In petty offense cases (Class B and Class C misdemeanors, and infractions), no such consent is required.⁷

Although section 3401 allows a magistrate judge to preside over trials and impose sentences in misdemeanor cases upon a defendant's consent, under current law, a magistrate judge does not have authority to rule on post-conviction motions that pertain to such cases—even if they presided over the trial and sentencing. A magistrate judge also cannot rule on motions related to mental competency in these same cases, absent a referral from a district judge. Nor can a magistrate judge order the preparation of presentence reports in cases over which they exercise trial jurisdiction without first seeking permission from a district judge. Plainly, this is inefficient.

Practical considerations favor amending section 3401 and the Judicial Conference of the United States is supportive of this change. Judicial economy is best served by allowing a magistrate judge to adjudicate any proceedings in which that magistrate judge was also the trial and sentencing judge. This would enable district courts to manage caseloads in a more efficient and economical manner. In the same way that district judges generally rule on motions to vacate a sentence under 28 U.S.C. § 2255 and other related motions where they handled the underlying felony case, magistrate judges should be able to rule on section 2255 and other motions where they handled the underlying misdemeanor case.

Hearings

The Committee has not held any hearings relating to this legislation.

Committee Consideration

On September 9, 2020, the Committee met in open session and ordered the bill, H.R. 8124, favorably reported by voice vote, a quorum being present.

Committee Votes

No record votes occurred during the Committee's consideration of H.R. 8124.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activi-

⁵ See 28 U.S.C. § 636(a)(3) & 18 U.S.C. § 3401.

⁶ See 18 U.S.C. § 3401(b).

⁷ See 18 U.S.C. § 3401(a).

ties under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office (CBO). The Committee has requested but not received from the Director of the CBO a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 8124 establishes or reauthorizes a program of the Federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 8124 would improve the administration of justice by ensuring that released indigent federal defendants who must attend court receive funding for return transportation and subsistence expenses and by authorizing magistrate judges to decide post-judgment motions in cases over which they exercised trial jurisdiction.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 8124 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short Title. Section 1 sets forth the short title of the bill, the “Criminal Justice Administration Act of 2020.”

Sec. 2. Transportation and Subsistence for Criminal Justice Act Defendants. Section 2 of the bill would amend Section 4285 of Title 18, which pertains to procedures concerning persons released pending further judicial proceedings. Section 2 would do three new things: (1) enable the court to determine, based only upon the fact that a defendant has been determined to be indigent by virtue of appointment of counsel under the Criminal Justice Act, that they

are financially unable to afford their own transportation for a court appearance; (2) ensure that defendants are provided funding both to the place where their appearance is required and back to the place of their arrest, or to their bona fide residence; and (3) clarify that “subsistence expenses” includes “money for both lodging and food, during travel to the person’s destination and during any proceeding at which the person’s appearance is required.” Section 2 would also still enable the court to determine “after appropriate inquiry,” that a defendant is financially unable to provide necessary transportation on their own, even if the defendant does not have appointed counsel.

Sec. 3. Effective Use of Magistrate Judges to Decide Postjudgment Motions. Section 3 of the bill would amend Section 3401 of Title 18 to enable magistrate judges to rule on postjudgment motions when they exercise trial jurisdiction in petty offense cases or in misdemeanor cases in which the defendant has consented to a magistrate judge. Magistrate judges would be authorized to rule on all post-judgment motions in such cases, including, but not limited to, petitions for writs of habeas corpus, writs of coram nobis, motions to vacate a sentence under 28 U.S.C. § 2255, and motions related to the mental competency of defendants. Section 3 would also authorize a magistrate judge who exercises trial jurisdiction in a particular case to order a presentence investigation of the defendant in the case and preparation of a report of the investigation, without first having to obtain the approval of a district court judge.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART II—CRIMINAL PROCEDURE

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CHAPTER 219—TRIAL BY UNITED STATES MAGISTRATE JUDGES

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§ 3401. Misdemeanors; application of probation laws

(a) When specially designated to exercise such jurisdiction by the district court or courts he serves, any United States magistrate judge shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district.

(b) Any person charged with a misdemeanor, other than a petty offense may elect, however, to be tried before a district judge for

the district in which the offense was committed. The magistrate judge shall carefully explain to the defendant that he has a right to trial, judgment, sentencing by a district judge and that he may have a right to trial by jury before a district judge or magistrate judge. The magistrate judge may not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the magistrate judge and expressly and specifically waives trial, judgment, sentencing by a district judge. Any such consent and waiver shall be made in writing or orally on the record.

(c) A magistrate judge who exercises trial jurisdiction under this section, and before whom a person is convicted or pleads either guilty or nolo contendere, may[, with the approval of a judge of the district court,] direct the probation service of the court to conduct a presentence investigation on that person and render a report to the magistrate judge prior to the imposition of sentence.

(d) The probation laws shall be applicable to persons tried by a magistrate judge under this section, and such officer shall have power to grant probation and to revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge.

(e) Proceedings before United States magistrate judges under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. For purposes of appeal a copy of the record of such proceedings shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.

(f) The district court may order that proceedings in any misdemeanor case be conducted before a district judge rather than a United States magistrate judge upon the court's own motion or, for good cause shown, upon petition by the attorney for the Government. Such petition should note the novelty, importance, or complexity of the case, or other pertinent factors, and be filed in accordance with regulations promulgated by the Attorney General.

(g) The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title. The magistrate judge may, in the case of any misdemeanor, other than a petty offense, involving a juvenile in which consent to trial before a magistrate judge has been filed under subsection (b), exercise all powers granted to the district court under chapter 403 of this title. For purposes of this subsection, proceedings under chapter 403 of this title may be instituted against a juvenile by a violation notice or complaint, except that no such case may proceed unless the certification referred to in section 5032 of this title has been filed in open court at the arraignment.

(h) The magistrate judge shall have power to modify, revoke, or terminate supervised release of any person sentenced to a term of supervised release by a magistrate judge.

(i) A district judge may designate a magistrate judge to conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for such modification, revocation, or termination by the judge, including, in the case of revocation, a

recommended disposition under section 3583(e) of this title. The magistrate judge shall file his or her proposed findings and recommendations.

(j) A magistrate judge who exercises trial jurisdiction under this section, in either a petty offense case or a misdemeanor case in which the defendant has consented to a magistrate judge, may also rule on all post-judgment motions in that case, including but not limited to petitions for writs of habeas corpus, writs of coram nobis, motions to vacate a sentence under section 2255 of title 28, and motions related to mental competency under chapter 313 of this title.

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PART III—PRISONS AND PRISONERS

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CHAPTER 315—DISCHARGE AND RELEASE PAYMENTS

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§ 4285. Persons released pending further judicial proceedings

Any judge or magistrate judge of the United States, when ordering a person released under chapter 207 on a condition of his subsequent appearance before that court, any division of that court, or any court of the United States in another judicial district in which criminal proceedings are pending, may, **【when the interests of justice would be served thereby and the United States judge or magistrate judge is satisfied, after appropriate inquiry, that the defendant is financially unable to provide the necessary transportation to appear before the required court on his own】** *when the United States judge or magistrate judge is satisfied that the defendant is indigent based on appointment of counsel pursuant to section 3006A, or, after appropriate inquiry, that the defendant is financially unable to provide necessary transportation on his own,* direct the United States marshal to arrange for that person’s means of noncustodial transportation or furnish the fare for such transportation **【to the place where his appearance is required,】** *(1) to the place where each appearance is required and (2) to return to the place of the person’s arrest or bona fide residence,* and in addition may direct the United States marshal to furnish that person with an amount of money for subsistence expenses **【to his destination,】** *which includes money for both lodging and food, during travel to the person’s destination and during any proceeding at which the person’s appearance is required* not to exceed the amount authorized as a per diem allowance for travel under section 5702(a) of title 5, United States Code. When so ordered, such expenses shall be paid by the marshal out of funds authorized by the Attorney General for such expenses.

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