

thorized to place in Arlington National Cemetery a memorial marker honoring veterans who fought in the battle in the European theater of operations during World War II known as the Battle of the Bulge.”

**§ 2410. Burial of cremated remains in Arlington National Cemetery**

(a) The Secretary of the Army shall designate an area of appropriate size within Arlington National Cemetery for the unmarked interment, in accordance with such regulations as the Secretary may prescribe, of the ashes of persons eligible for interment in Arlington National Cemetery whose remains were cremated. Such area shall be an area not suitable for the burial of casketed remains.

(b) The Secretary of each military department shall make available appropriate forms on which those members of the Armed Forces who so desire may indicate their desire to be buried within the area to be designated under subsection (a).

(c)(1) The Secretary of the Army shall ensure that, under such regulations as the Secretary may prescribe, the cremated remains of any person described in paragraph (2) are eligible for above ground inurnment in Arlington National Cemetery with military honors in accordance with section 1491 of title 10.

(2) A person described in this paragraph is a person whose service has been determined to be active duty service pursuant to section 401 of the GI Bill Improvement Act of 1977 (Public Law 95-202; 38 U.S.C. 106 note) as of the date of the enactment of this paragraph.

(Added Pub. L. 101-237, title V, § 502(a), Dec. 18, 1989, 103 Stat. 2093, § 1010; amended Pub. L. 102-54, § 14(b)(22), June 13, 1991, 105 Stat. 284; renumbered § 2410, Pub. L. 102-83, § 5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 114-158, § 1(a), May 20, 2016, 130 Stat. 394.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 114-158, which was approved May 20, 2016.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114-158 added subsec. (c).  
1991—Pub. L. 102-83 renumbered section 1010 of this title as this section.

Subsec. (b). Pub. L. 102-54 substituted “each military department” for “the military departments”.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114-158, § 1(b), May 20, 2016, 130 Stat. 394, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to—

“(A) the remains of a person that are not formally interred or inurned as of the date of the enactment of this Act [May 20, 2016]; and

“(B) a person who dies on or after the date of the enactment of this Act.

“(2) FORMALLY INTERRED OR INURNED DEFINED.—In this subsection, the term ‘formally interred or inurned’ means interred or inurned in a cemetery, crypt, mausoleum, columbarium, niche, or other similar formal location.”

**§ 2410A. Arlington National Cemetery: other administrative matters**

(a) ONE GRAVESITE.—(1) Not more than one gravesite may be provided at Arlington National

Cemetery to a veteran or member of the Armed Forces who is eligible for interment or inurnment at such cemetery.

(2) The Secretary of the Army may waive the prohibition in paragraph (1) as the Secretary of the Army considers appropriate.

(b) PROHIBITION AGAINST RESERVATION OF GRAVESITES.—(1) A gravesite at Arlington National Cemetery may not be reserved for an individual before the death of such individual.

(2)(A) The President may waive the prohibition in paragraph (1) as the President considers appropriate.

(B) Upon waiving the prohibition in paragraph (1), the President shall submit notice of such waiver to—

(i) the Committee on Veterans' Affairs and the Committee on Armed Services of the Senate; and

(ii) the Committee on Veterans' Affairs and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 112-154, title VI, § 602(a), Aug. 6, 2012, 126 Stat. 1199.)

EFFECTIVE DATE

Pub. L. 112-154, title VI, § 602(c), Aug. 6, 2012, 126 Stat. 1200, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), section 2410A of title 38, United States Code, as added by subsection (a), shall apply with respect to all interments at Arlington National Cemetery after the date of the enactment of this Act [Aug. 6, 2012].

“(2) EXCEPTION.—Subsection (b) of such section, as so added, shall not apply with respect to the interment of an individual for whom a request for a reserved gravesite was approved by the Secretary of the Army before January 1, 1962.”

**§ 2411. Prohibition against interment or memorialization in the National Cemetery Administration or Arlington National Cemetery of persons committing Federal or State capital crimes**

(a)(1) In the case of a person described in subsection (b), the appropriate Federal official may not—

(A) inter the remains of such person in a cemetery in the National Cemetery Administration or in Arlington National Cemetery; or

(B) honor the memory of such person in a memorial area in a cemetery in the National Cemetery Administration (described in section 2403(a) of this title) or in such an area in Arlington National Cemetery (described in section 2409(a) of this title).

(2) In the case of a person described in subsection (b)(1), (b)(2), or (b)(4), the prohibition under paragraph (1) shall not apply unless written notice of a conviction referred to in subsection (b)(1), (b)(2), or (b)(4), as the case may be, is received by the appropriate Federal official before the interment or memorialization of such person. Such written notice shall be furnished to such official by the Attorney General, in the case of a Federal crime, or by an appropriate State official, in the case of a State crime.

(b) A person referred to in subsection (a) is any of the following:

(1) A person who has been convicted of a Federal capital crime and whose conviction is

final (other than a person whose sentence was commuted by the President).

(2) A person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of a State).

(3) A person who—

(A) is found (as provided in subsection (c)) to have committed a Federal capital crime or a State capital crime, but

(B) has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution.

(4) A person—

(A) who has been convicted of a Federal or State crime causing the person to be a tier III sex offender for purposes of the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.);<sup>1</sup>

(B) who, for such crime, is sentenced to a minimum of life imprisonment; and

(C) whose conviction is final (other than a person whose sentence was commuted by the President or Governor of a State, as the case may be).

(c) A finding under subsection (b)(3) shall be made by the appropriate Federal official. Any such finding may only be made based upon a showing of clear and convincing evidence, after an opportunity for a hearing in a manner prescribed by the appropriate Federal official.

(d)(1) In a case described in subsection (e), the appropriate Federal official may reconsider a decision to—

(A) inter the remains of a person in a cemetery in the National Cemetery Administration or in Arlington National Cemetery; or

(B) honor the memory of a person in a memorial area in a cemetery in the National Cemetery Administration (described in section 2403(a) of this title) or in such an area in Arlington National Cemetery (described in section 2409(a) of this title).

(2)(A)(i) In a case described in subsection (e)(1)(A), the appropriate Federal official shall provide notice to the deceased person's next of kin or other person authorized to arrange burial or memorialization of the deceased person of the decision of the appropriate Federal official to disinter the remains of the deceased person or to remove a memorial headstone or marker memorializing the deceased person.

(ii) In a case described in subsection (e)(1)(B), if the appropriate Federal official finds, based upon a showing of clear and convincing evidence and after an opportunity for a hearing in a manner prescribed by the appropriate Federal official, that the person had committed a Federal capital crime or a State capital crime but had not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution, the appropriate Federal official shall provide notice to the deceased person's next of kin or other person authorized to arrange burial or memorialization of the deceased person of the decision of the appropriate Federal official to disinter the re-

mains of the deceased person or to remove a memorial headstone or marker memorializing the deceased person.

(B) Notice under subparagraph (A) shall be provided by the appropriate Federal official as follows:

(i) By the Secretary in accordance with section 5104 of this title.

(ii) By the Secretary of Defense in accordance with such regulations as the Secretary of Defense shall prescribe for purposes of this subsection.

(3)(A) Notwithstanding any other provision of law, the next of kin or other person authorized to arrange burial or memorialization of the deceased person shall be allowed a period of 60 days from the date of the notice required by paragraph (2) to file a notice of disagreement with the Federal official that provided the notice.

(B)(i) A notice of disagreement filed with the Secretary under subparagraph (A) shall be treated as a notice of disagreement filed under section 7105 of this title and shall initiate appellate review in accordance with the provisions of chapter 71 of this title.

(ii) A notice of disagreement filed with the Secretary of Defense under subparagraph (A) shall be decided in accordance with such regulations as the Secretary of Defense shall prescribe for purposes of this subsection.

(4) When the decision of the appropriate Federal official to disinter the remains or remove a memorial headstone or marker of the deceased person becomes final either by failure to appeal the decision in accordance with paragraph (3)(A) or by final disposition of the appeal pursuant to paragraph (3)(B), the appropriate Federal official may take any of the following actions:

(A) Disinter the remains of the person from the cemetery in the National Cemetery Administration or in Arlington National Cemetery and provide for the reburial or other appropriate disposition of the disinterred remains in a place other than a cemetery in the National Cemetery Administration or in Arlington National Cemetery.

(B) Remove from a memorial area in a cemetery in the National Cemetery Administration or in Arlington National Cemetery any memorial headstone or marker placed to honor the memory of the person.

(e)(1) A case described in this subsection is a case in which the appropriate Federal official receives—

(A) written notice of a conviction referred to in subsection (b)(1), (b)(2), or (b)(4) of a person described in paragraph (2); or

(B) information that a person described in paragraph (2) may have committed a Federal capital crime or a State capital crime but was not convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution.

(2) A person described in this paragraph is a person—

(A) whose remains have been interred in a cemetery in the National Cemetery Administration or in Arlington National Cemetery; or

(B) whose memory has been honored in a memorial area in a cemetery in the National

<sup>1</sup> See References in Text note below.

Cemetery Administration or in such an area in Arlington National Cemetery.

(f) For purposes of this section:

(1) The term “Federal capital crime” means an offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

(2) The term “State capital crime” means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of imprisonment for life or the death penalty may be imposed.

(3) The term “appropriate Federal official” means—

(A) the Secretary, in the case of the National Cemetery Administration; and

(B) the Secretary of the Army, in the case of Arlington National Cemetery.

(Added Pub. L. 105-116, §1(a), Nov. 21, 1997, 111 Stat. 2381; amended Pub. L. 105-368, title IV, §403(d)(1), Nov. 11, 1998, 112 Stat. 3339; Pub. L. 107-330, title II, §202, Dec. 6, 2002, 116 Stat. 2824; Pub. L. 109-163, div. A, title VI, §662(a), Jan. 6, 2006, 119 Stat. 3314; Pub. L. 112-260, title I, §105(a), (b), Jan. 10, 2013, 126 Stat. 2421; Pub. L. 113-65, §2(a), (b), Dec. 20, 2013, 127 Stat. 669, 671; Pub. L. 114-58, title VI, §601(14), Sept. 30, 2015, 129 Stat. 539.)

#### REFERENCES IN TEXT

The Sex Offender Registration and Notification Act, referred to in subsec. (b)(4)(A), is title I of Pub. L. 109-248, July 27, 2006, 120 Stat. 590, which was classified principally to subchapter I (§16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare, prior to editorial reclassification as chapter 209 (§20901 et seq.) of Title 34, Crime Control and Law Enforcement. For complete classification of this Act to the Code, see Short Title of 2006 Act note set out under section 10101 of Title 34 and Tables.

#### AMENDMENTS

2015—Subsec. (e)(1). Pub. L. 114-58 substituted “Federal official” for “federal official” in introductory provisions.

2013—Subsec. (a)(2). Pub. L. 113-65, §2(b), struck out “such official approves an application for” after “received by the appropriate Federal official before”.

Pub. L. 112-260, §105(b), substituted “, (b)(2), or (b)(4)” for “or (b)(2)” in two places and struck out “capital” before “crime” in two places.

Subsec. (b)(4). Pub. L. 112-260, §105(a), added par. (4).

Subsecs. (d) to (f). Pub. L. 113-65, §2(a), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

2006—Subsec. (b)(1). Pub. L. 109-163, §662(a)(1)(A), substituted “and whose conviction is final (other than a person whose sentence was commuted by the President)” for “for which the person was sentenced to death or life imprisonment”.

Subsec. (b)(2). Pub. L. 109-163, §662(a)(1)(B), substituted “and whose conviction is final (other than a person whose sentence was commuted by the Governor of a State)” for “for which the person was sentenced to death or life imprisonment without parole”.

Subsec. (d)(1). Pub. L. 109-163, §662(a)(2)(A), substituted “a sentence of imprisonment for life or the death penalty may be imposed” for “the death penalty or life imprisonment may be imposed”.

Subsec. (d)(2). Pub. L. 109-163, §662(a)(2)(B), substituted “a sentence of imprisonment for life or the death penalty may be imposed” for “the death penalty or life imprisonment without parole may be imposed”.

2002—Subsec. (a)(2). Pub. L. 107-330 substituted “In the case of a person described in subsection (b)(1) or (b)(2), the prohibition” for “The prohibition” and “re-

ferred to in subsection (b)(1) or (b)(2), as the case may be,” for “or finding under subsection (b)”.

1998—Pub. L. 105-368, §403(d)(1), substituted “Administration” for “System” in section catchline.

Subsecs. (a)(1)(A), (B), (d)(3)(A). Pub. L. 105-368, §403(d)(1), substituted “Administration” for “System”.

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 113-65, §2(c), Dec. 20, 2013, 127 Stat. 671, provided that: “The amendments made by this section [amending this section] shall apply with respect to any interment or memorialization conducted by the Secretary of Veterans Affairs or the Secretary of the Army in a cemetery in the National Cemetery Administration or in Arlington National Cemetery after the date of the enactment of this Act [Dec. 20, 2013].”

Pub. L. 112-260, title I, §105(c), Jan. 10, 2013, 126 Stat. 2421, provided that: “The amendments made by this section [amending this section] shall apply with respect to interments and memorializations that occur on or after the date of the enactment of this Act [Jan. 10, 2013].”

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-163 applicable with respect to funerals and burials that occur on or after Jan. 6, 2006, see section 662(e) of Pub. L. 109-163, set out as a note under section 985 of Title 10, Armed Forces.

#### EFFECTIVE DATE

Pub. L. 105-116, §1(c), Nov. 21, 1997, 111 Stat. 2382, provided that: “Section 2411 of title 38, United States Code, as added by subsection (a), shall apply with respect to applications for interment or memorialization made on or after the date of the enactment of this Act [Nov. 21, 1997].”

#### REGULATIONS

Pub. L. 109-163, div. A, title VI, §662(d)(1), Jan. 6, 2006, 119 Stat. 3315, provided that: “The Secretary of Veterans Affairs shall prescribe regulations to ensure that a person is not interred in any cemetery in the National Cemetery System unless a good faith effort has been made to determine whether such person is ineligible for such interment or honors by reason of being a person described in section 2411(b) of title 38, United States Code, or is otherwise ineligible for such interment under Federal law.”

### § 2412. Lease of land and buildings

(a) **LEASE AUTHORIZED.**—The Secretary may lease any undeveloped land and unused or underutilized buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration.

(b) **TERM.**—The term of a lease under subsection (a) may not exceed 10 years.

(c) **LEASE TO PUBLIC OR NONPROFIT ORGANIZATIONS.**—(1) A lease under subsection (a) to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5).<sup>1</sup>

(2) Notwithstanding section 1302 of title 40 or any other provision of law, a lease under subsection (a) to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as a part or all of the consideration for the lease.

(d) **NOTICE.**—Before entering into a lease under subsection (a), the Secretary shall give appropriate public notice of the intention of the Secretary to enter into the lease in a newspaper of

<sup>1</sup> See References in Text note below.