

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 already 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.

Subsec. (b)(2). Pub. L. 100-690, § 7091(1), added par. (2) and struck out former par. (2) which read as follows: “that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, or a sentence that does not include a term of imprisonment.”

1986—Subsec. (a). Pub. L. 99-646, § 55(d)(1), (2), (4), substituted “under” for “pursuant to” and “such judicial officer” for “he” and struck out “the provisions of” after “in accordance with”.

Subsec. (b). Pub. L. 99-646, § 55(d)(1)-(4), in par. (1) substituted “under” for “pursuant to” and inserted “of this title” after “(c)”, and in concluding provision, substituted “such judicial officer” for “he”, struck out “the provisions of” after “in accordance with”, and inserted “of this title” after “(c)”.

Subsec. (b)(2). Pub. L. 99-646, § 51(a)(1), substituted “reversal,” for “reversal or” and inserted “, or a sentence that does not include a term of imprisonment”.

Subsec. (c). Pub. L. 99-646, § 51(a)(2), inserted provision that, except as provided in subsec. (b), the judicial officer, in a case in which an appeal has been taken by the United States under section 3742, if the person has been sentenced to a term of imprisonment, order that person detained, and in any other circumstance, release or detain the person under section 3142.

Pub. L. 99-646, § 55(a), (d)(2), (5), substituted “under section 3731” for “pursuant to the provisions of section 3731” and “with section 3142 of this title” for “with the provisions of section 3142”.

Pub. L. 99-646, § 51(b), provided that the amendment of subsec. (c) by section 223(f)(2) of Pub. L. 98-473 shall not take effect. See 1984 Amendment note below.

1984—Subsec. (a). Pub. L. 98-473, § 223(f)(1), inserted provisions relating to applicable guideline under section 994 of title 28.

Subsec. (c). Pub. L. 98-473, § 223(f)(2), which would have added a final sentence requiring a judge to treat a defendant in a case in which an appeal had been taken by the United States pursuant to the provisions of section 3742 in accordance with the provisions of (1) subsection (a) if the person had been sentenced to a term of imprisonment; or (2) section 3142 if the person had not been sentenced to a term of imprisonment did not become effective pursuant to section 51(b) of Pub. L. 99-646. See 1986 Amendment note above.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-646, § 51(c), Nov. 10, 1986, 100 Stat. 3606, provided that: “The amendment made by subsection (a)(2) [amending this section] shall take effect on the date of the taking of effect of section 3742 of title 18, United States Code [Nov. 1, 1987].”

Amendment by section 55(a), (d) of 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.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

§ 3144. Release or detention of a material witness

If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142 of this title. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

(Added Pub. L. 98-473, title II, §203(a), Oct. 12, 1984, 98 Stat. 1982; amended Pub. L. 99-646, §55(e), Nov. 10, 1986, 100 Stat. 3609.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in text, are set out in the Appendix to this title.

PRIOR PROVISIONS

A prior section 3144, act June 25, 1948, ch. 645, 62 Stat. 821, related to cases removed from State courts, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98-473.

AMENDMENTS

1986—Pub. L. 99-646 substituted “subpoena” for “subpena” and inserted “of this title”.

Statutory Notes and Related Subsidiaries

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.

§ 3145. Review and appeal of a release or detention order

(a) REVIEW OF A RELEASE ORDER.—If a person is ordered released by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court—

(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

(b) REVIEW OF A DETENTION ORDER.—If a person is ordered detained by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

(c) APPEAL FROM A RELEASE OR DETENTION ORDER.—An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly. A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.

(Added Pub. L. 98-473, title II, §203(a), Oct. 12, 1984, 98 Stat. 1982; amended Pub. L. 101-647, title IX, §902(c), Nov. 29, 1990, 104 Stat. 4827; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3145, act June 25, 1948, ch. 645, 62 Stat. 821, provided cross references to the Federal Rules of Criminal Procedure for rules covering parties and witnesses, prior to repeal in the revision of this chapter by section 203(a) of Pub. L. 98-473.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-647 inserted at end “A person subject to detention pursuant to section 3143(a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143(a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.”

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” in subsections (a) and (b) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3146. Penalty for failure to appear

(a) OFFENSE.—Whoever, having been released under this chapter knowingly—

(1) fails to appear before a court as required by the conditions of release; or

(2) fails to surrender for service of sentence pursuant to a court order;

shall be punished as provided in subsection (b) of this section.

(b) PUNISHMENT.—(1) The punishment for an offense under this section is—

(A) if the person was released in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction for—

(i) an offense punishable by death, life imprisonment, or imprisonment for a term of 15 years or more, a fine under this title or imprisonment for not more than ten years, or both;

(ii) an offense punishable by imprisonment for a term of five years or more, a fine under this title or imprisonment for not more than five years, or both;

(iii) any other felony, a fine under this title or imprisonment for not more than two years, or both; or