

Sec. 3006A Adequate representation of defendants

§3006A. Adequate representation of defendants

(a) Choice of Plan.—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with this section. Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation. Each plan shall provide the following:

(1) Representation shall be provided for any financially eligible person who—

(A) is charged with a felony or a Class A misdemeanor;

(B) is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of this title;

(C) is charged with a violation of probation;

(D) is under arrest, when such representation is required by law;

(E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;

(F) is subject to a mental condition hearing under chapter 313 of this title;

(G) is in custody as a material witness;

(H) is entitled to appointment of counsel under the sixth amendment to the Constitution;

(I) faces loss of liberty in a case, and Federal law requires the appointment of counsel; or

(J) is entitled to the appointment of counsel under section 4109 of this title.

(2) Whenever the United States magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who—

(A) is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized; or

(B) is seeking relief under section 2241, 2254, or 2255 of title 28.

(3) Private attorneys shall be appointed in a substantial proportion of the cases. Each plan may include, in addition to the provisions for private attorneys, either of the following or both:

(A) Attorneys furnished by a bar association or a legal aid agency,

(B) Attorneys furnished by a defender organization established in accordance with the provisions of subsection (g).

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

(b) Appointment of Counsel.—Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the plan. In every case in which a person entitled to representation under a plan approved under subsection (a) appears without counsel, the United States magistrate judge or the court shall advise the person that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the person waives representation by counsel, the United States magistrate judge or the court, if satisfied after appropriate inquiry that the person is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The United States magistrate judge or the court shall appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

(c) Duration and Substitution of Appointments.—A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate judge or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the United States magistrate judge or the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate judge or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate judge or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

(d) Payment for Representation.—

(1) Hourly Rate.—Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding \$60 per hour for time expended in court or before a United States magistrate judge and \$40 per hour for time reasonably expended out of court, unless the Judicial Conference determines that a higher rate of not in excess of \$75 per hour is justified for a circuit or for particular districts within a circuit, for time expended in court or before a United States magistrate judge and for time expended out of court. The Judicial Conference shall develop guidelines for determining the maximum hourly rates for each circuit in accordance with the preceding sentence, with variations by district, where appropriate, taking into account such factors as the minimum range of the prevailing hourly rates for qualified attorneys in the district in which the representation is provided and the recommendations of the judicial councils of the circuits. Not less than 3 years after the effective date of the Criminal Justice Act Revision of 1986, the Judicial Conference is authorized to raise the maximum hourly rates specified in this paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay under the General Schedule made pursuant to section 5305¹ of title 5 on or after such effective date. After the rates are raised under the preceding

sentence, such maximum hourly rates may be raised at intervals of not less than 1 year each, up to the aggregate of the overall average percentages of such adjustments made since the last raise was made under this paragraph. Attorneys may be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate ² or the court, and the costs of defending actions alleging malpractice of counsel in furnishing representational services under this section. No reimbursement for expenses in defending against malpractice claims shall be made if a judgment of malpractice is rendered against the counsel furnishing representational services under this section. The United States magistrate ² or the court shall make determinations relating to reimbursement of expenses under this paragraph.

(2) Maximum Amounts.—For representation of a defendant before the United States magistrate judge or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed \$7,000 for each attorney in a case in which one or more felonies are charged, and \$2,000 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed \$5,000 for each attorney in each court. For representation of a petitioner in a non-capital habeas corpus proceeding, the compensation for each attorney shall not exceed the amount applicable to a felony in this paragraph for representation of a defendant before a judicial officer of the district court. For representation of such petitioner in an appellate court, the compensation for each attorney shall not exceed the amount applicable for representation of a defendant in an appellate court. For representation of an offender before the United States Parole Commission in a proceeding under section 4106A of this title, the compensation shall not exceed \$1,500 for each attorney in each proceeding; for representation of an offender in an appeal from a determination of such Commission under such section, the compensation shall not exceed \$5,000 for each attorney in each court. For any other representation required or authorized by this section, the compensation shall not exceed \$1,500 for each attorney in each proceeding. The compensation maximum amounts provided in this paragraph shall increase simultaneously by the same percentage, rounded to the nearest multiple of \$100, as the aggregate percentage increases in the maximum hourly compensation rate paid pursuant to paragraph (1) for time expended since the case maximum amounts were last adjusted.

(3) Waiving Maximum Amounts.—Payment in excess of any maximum amount provided in paragraph (2) of this subsection may be made for extended or complex representation whenever the court in which the representation was rendered, or the United States magistrate judge if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active or senior circuit judge.

(4) Disclosure of fees.—

(A) In general.—Subject to subparagraphs (B) through (E), the amounts paid under this subsection for services in any case shall be made available to the public by the court upon the court's approval of the payment.

(B) Pre-trial or trial in progress.—If a trial is in pre-trial status or still in progress and after considering the defendant's interests as set forth in subparagraph (D), the court shall—

(i) redact any detailed information on the payment voucher provided by defense counsel to justify the expenses to the court; and

(ii) make public only the amounts approved for payment to defense counsel by dividing those amounts into the following categories:

- (I) Arraignment and or plea.
- (II) Bail and detention hearings.
- (III) Motions.
- (IV) Hearings.
- (V) Interviews and conferences.
- (VI) Obtaining and reviewing records.
- (VII) Legal research and brief writing.
- (VIII) Travel time.
- (IX) Investigative work.
- (X) Experts.
- (XI) Trial and appeals.
- (XII) Other.

(C) Trial completed.—

(i) In general.—If a request for payment is not submitted until after the completion of the trial and subject to consideration of the defendant's interests as set forth in subparagraph (D), the court shall make available to the public an unredacted copy of the expense voucher.

(ii) Protection of the rights of the defendant.—If the court determines that defendant's interests as set forth in subparagraph (D) require a limited disclosure, the court shall disclose amounts as provided in subparagraph (B).

(D) Considerations.—The interests referred to in subparagraphs (B) and (C) are—

- (i) to protect any person's 5th amendment right against self-incrimination;
- (ii) to protect the defendant's 6th amendment rights to effective assistance of counsel;
- (iii) the defendant's attorney-client privilege;
- (iv) the work product privilege of the defendant's counsel;
- (v) the safety of any person; and

(vi) any other interest that justice may require, except that the amount of the fees shall not be considered a reason justifying any limited disclosure under section 3006A(d)(4) of title 18, United States Code.

(E) Notice.—The court shall provide reasonable notice of disclosure to the counsel of the defendant prior to the approval of the payments in order to allow the counsel to request redaction based on the considerations set forth in subparagraph (D). Upon completion of the trial, the court shall release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court. If there is an appeal, the court shall not release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court until such time as the appeals process is completed, unless the court determines that none of the defendant's interests set forth in subparagraph (D) will be compromised.

(F) Effective date.—The amendment made by paragraph (4) shall become effective 60 days after enactment of this Act, will apply only to cases filed on or after the effective date, and shall be in effect for no longer than 24 months after the effective date.

(5) Filing Claims.—A separate claim for compensation and reimbursement shall be made to the district court for representation before the United States magistrate judge and the court, and to each appellate court before which the attorney provided representation to the person involved. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the United States magistrate judge and the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney or to the bar association or legal aid agency or community defender organization which provided the appointed attorney. In cases where representation is furnished exclusively before a United States magistrate judge, the claim shall be submitted to him and he shall fix the compensation and reimbursement to be paid. In cases where representation is furnished other than before the United States magistrate judge, the district court, or an appellate court, claims shall be submitted to the district court which shall fix the compensation and reimbursement to be paid.

(6) New Trials.—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(7) Proceedings Before Appellate Courts.—If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(e) Services Other Than Counsel.—

(1) Upon Request.—Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for adequate representation may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court, or the United States magistrate judge if the services are required in connection with a matter over which he has jurisdiction, shall authorize counsel to obtain the services.

(2) Without Prior Request.—(A) Counsel appointed under this section may obtain, subject to later review, investigative, expert, and other services without prior authorization if necessary for adequate

representation. Except as provided in subparagraph (B) of this paragraph, the total cost of services obtained without prior authorization may not exceed \$800 and expenses reasonably incurred.

(B) The court, or the United States magistrate judge (if the services were rendered in a case disposed of entirely before the United States magistrate judge), may, in the interest of justice, and upon the finding that timely procurement of necessary services could not await prior authorization, approve payment for such services after they have been obtained, even if the cost of such services exceeds \$800.

(3) Maximum Amounts.—Compensation to be paid to a person for services rendered by him to a person under this subsection, or to be paid to an organization for services rendered by an employee thereof, shall not exceed \$2,400, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, or by the United States magistrate judge if the services were rendered in connection with a case disposed of entirely before him, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the circuit. The chief judge of the circuit may delegate such approval authority to an active or senior circuit judge.

(4) Disclosure of fees.—The amounts paid under this subsection for services in any case shall be made available to the public.

(5) The dollar amounts provided in paragraphs (2) and (3) shall be adjusted simultaneously by an amount, rounded to the nearest multiple of \$100, equal to the percentage of the cumulative adjustments taking effect under section 5303 of title 5 in the rates of pay under the General Schedule since the date the dollar amounts provided in paragraphs (2) and (3), respectively, were last enacted or adjusted by statute.

(f) Receipt of Other Payments.—Whenever the United States magistrate judge or the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, to the bar association or legal aid agency or community defender organization which provided the appointed attorney, to any person or organization authorized pursuant to subsection (e) to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(g) Defender Organization.—

(1) Qualifications.—A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided for either under subparagraphs (A) or (B) of paragraph (2) of this subsection or both. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas. In the event that adjacent districts or parts of districts are located in different circuits, the plan for furnishing representation shall be approved by the judicial council of each circuit.

(2) Types of Defender Organizations.—

(A) Federal Public Defender Organization.—A Federal Public Defender Organization shall consist of one or more full-time salaried attorneys. An organization for a district or part of a district or two adjacent districts or parts of districts shall be supervised by a Federal Public Defender appointed by the court of appeals of the circuit, without regard to the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served.

Nothing contained herein shall be deemed to authorize more than one Federal Public Defender within a single judicial district. The Federal Public Defender shall be appointed for a term of four years, unless sooner removed by the court of appeals of the circuit for incompetency, misconduct in office, or neglect of duty. Upon the expiration of his term, a Federal Public Defender may, by a majority vote of the judges of the court of appeals, continue to perform the duties of his office until his successor is appointed, or until one year after the expiration of such Defender's term, whichever is earlier. The compensation of the Federal Public Defender shall be fixed by the court of appeals of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if two districts or parts of districts are involved, the compensation of the higher paid United States attorney of the districts. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, full-time attorneys in such number as may be approved by the court of appeals of the circuit and other personnel in such number as may be approved by the Director of the Administrative Office of the United States Courts. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the Office of the United States attorney in the district where representation is furnished or, if two districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Neither the Federal Public Defender nor any attorney so appointed by him may engage in the private practice of law. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of its activities and financial position and its proposed budget. The Director of the Administrative Office shall submit, in accordance with section 605 of title 28, a budget for each organization for each fiscal year and shall out of the appropriations therefor make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e).

(B) Community Defender Organization.—A Community Defender Organization shall be a non-profit defense counsel service established and administered by any group authorized by the plan to provide representation. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States:

- (i) receive an initial grant for expenses necessary to establish the organization; and
- (ii) in lieu of payments under subsection (d) or (e), receive periodic sustaining grants to provide representation and other expenses pursuant to this section.

(3) Malpractice and Negligence Suits.—The Director of the Administrative Office of the United States Courts shall, to the extent the Director considers appropriate, provide representation for and hold harmless, or provide liability insurance for, any person who is an officer or employee of a Federal Public Defender Organization established under this subsection, or a Community Defender Organization established under this subsection which is receiving periodic sustaining grants, for money damages for injury, loss of liberty, loss of property, or personal injury or death arising from malpractice or negligence of any such officer or employee in furnishing representational services under this section while acting within the scope of that person's office or employment.

(h) Rules and Reports.—Each district court and court of appeals of a circuit shall submit a report on the appointment of counsel within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section.

(i) Appropriations.—There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section, including funds for the continuing education and training of persons providing representational services under this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

(j) Districts Included.—As used in this section, the term “district court” means each district court of the United States created by chapter 5 of title 28, the District Court of the Virgin Islands, the District Court for the Northern Mariana Islands, and the District Court of Guam.

(k) Applicability in the District of Columbia.—The provisions of this section shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this section shall not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(Added Pub. L. 88–455, §2, Aug. 20, 1964, 78 Stat. 552; amended Pub. L. 90–578, title III, §301(a)(1), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 91–447, §1, Oct. 14, 1970, 84 Stat. 916; Pub. L. 93–412, §3, Sept. 3, 1974, 88 Stat. 1093; Pub. L. 97–164, title II, §206(a), (b), Apr. 2, 1982, 96 Stat. 53; Pub. L. 98–473, title II, §§223(e), 405, 1901, Oct. 12, 1984, 98 Stat. 2028, 2067, 2185; Pub. L. 99–651, title I, §§102, 103, Nov. 14, 1986, 100 Stat. 3642, 3645; Pub. L. 100–182, §19, Dec. 7, 1987, 101 Stat. 1270; Pub. L. 100–690, title VII, §7101(f), Nov. 18, 1988, 102 Stat. 4416; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104–132, title IX, §903(a), Apr. 24, 1996, 110 Stat. 1318; Pub. L. 105–119, title III, §308, Nov. 26, 1997, 111 Stat. 2493; Pub. L. 106–113, div. B, §1000(a)(1) [title III, §308(a)], Nov. 29, 1999, 113 Stat. 1535, 1501A–37; Pub. L. 106–518, title II, §§210, 211, Nov. 13, 2000, 114 Stat. 2415; Pub. L. 108–447, div. B, title III, §304, Dec. 8, 2004, 118 Stat. 2894; Pub. L. 110–406, §§11–12(b), Oct. 13, 2008, 122 Stat. 4293, 4294; Pub. L. 111–174, §7, May 27, 2010, 124 Stat. 1217.)

REFERENCES IN TEXT

The effective date of the Criminal Justice Act Revision of 1986, referred to in subsec. (d)(1), is, with qualifications, 120 days after Nov. 14, 1986. See section 105 of Pub. L. 99–651, set out below as an Effective Date of 1986 Amendment note.

Section 5305 of title 5, referred to in subsec. (d)(1), was amended generally by Pub. L. 101–509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1436, and, as so amended, does not relate to adjustments in the rate of pay under the General Schedule. See section 5303 of Title 5, Government Organization and Employees.

The amendment made by paragraph (4), referred to in subsec. (d)(4)(F), probably means the amendment by section 308 of Pub. L. 105–119, which struck out former par. (4) of subsec. (d) and inserted the new par. (4).

Enactment of this Act, referred to in subsec. (d)(4)(F), probably means the date of enactment of Pub. L. 105–119, which enacted subsec. (d)(4) of this section and was approved Nov. 26, 1997.

AMENDMENTS

2010—Subsec. (e)(2). Pub. L. 111–174, §7(1)(A), substituted “\$800” for “\$500” in subpars. (A) and (B).

Subsec. (e)(3). Pub. L. 111–174, §7(1)(B), substituted “\$2,400” for “\$1,600” in first sentence.

Subsec. (e)(5). Pub. L. 111–174, §7(2), added par. (5).

2008—Subsec. (d)(2). Pub. L. 110–406, §11, inserted at end “The compensation maximum amounts provided in this paragraph shall increase simultaneously by the same percentage, rounded to the nearest multiple of \$100, as the aggregate percentage increases in the maximum hourly compensation rate paid pursuant to paragraph (1) for time expended since the case maximum amounts were last adjusted.”

Subsecs. (d)(3), (e)(3). Pub. L. 110–406, §12(a), (b), inserted “or senior” after “active” in second sentence.

2004—Subsec. (d)(2). Pub. L. 108–447, §304(a), substituted “\$7,000” for “\$5,200” and “\$2,000” for “\$1,500” in first sentence, “\$5,000” for “\$3,700” in second sentence, “\$1,500” for “\$1,200” and “\$5,000” for “\$3,900” in fifth sentence, and “\$1,500” for “\$1,200” in last sentence.

Subsec. (e)(2). Pub. L. 108–447, §304(b)(1), substituted “\$500” for “\$300” in subpars. (A) and (B).

Subsec. (e)(3). Pub. L. 108–447, §304(b)(2), substituted “\$1,600” for “\$1,000” in first sentence.

2000—Subsec. (d)(1). Pub. L. 106–518, §211, substituted “Attorneys may be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court, and the costs of defending actions alleging malpractice of counsel in furnishing representational services under this section. No reimbursement for expenses in defending against malpractice claims shall be made if a judgment of malpractice is rendered against the counsel furnishing representational services under this section. The United States magistrate or the court shall make determinations relating to reimbursement of expenses under this paragraph.” for “Attorneys shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.”

Subsec. (d)(2). Pub. L. 106–518, §210(4), (5), inserted after second sentence “For representation of a petitioner in a non-capital habeas corpus proceeding, the compensation for each attorney shall not exceed the amount applicable to a felony in this paragraph for representation of a defendant before a judicial officer of the district court. For representation of such petitioner in an appellate court, the compensation for each attorney shall not exceed the amount applicable for representation of a defendant in an appellate court.” and substituted “\$1,200” for “\$750” in last sentence.

Pub. L. 106–518, §210(1)–(3), in first sentence, substituted “\$5,200” for “\$3,500” and “\$1,500” for “\$1,000”, in second sentence, substituted “\$3,700” for “\$2,500”, and in third sentence, substituted “\$1,200” for “\$750” and “\$3,900” for “\$2,500”.

1999—Subsec. (d)(4)(D)(vi). Pub. L. 106–113 inserted “, except that the amount of the fees shall not be considered a reason justifying any limited disclosure under section 3006A(d)(4) of title 18, United States Code” after “require”.

1997—Subsec. (d)(4). Pub. L. 105–119 reenacted par. heading without change and amended text generally. Prior to amendment, text read as follows: “The amounts paid under this subsection, for representation in any case, shall be made available to the public.”

1996—Subsec. (d)(4) to (7). Pub. L. 104–132, §903(a)(1), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

Subsec. (e)(4). Pub. L. 104–132, §903(a)(2), added par. (4).

1988—Subsec. (a)(1)(J). Pub. L. 100–690, §7101(f)(1), added subpar. (J).

Subsec. (d)(2). Pub. L. 100–690, §7101(f)(2), inserted provisions at end to representation of offender before United States Parole Commission, and in appeal from determination of such Commission.

1987—Subsec. (a)(1)(E) to (I). Pub. L. 100–182 added subpar. (E) and redesignated former subpars. (E) to (H) as (F) to (I), respectively.

1986—Subsec. (a). Pub. L. 99–651, §103, made technical amendments to Pub. L. 98–473, §223(e), see 1984 Amendment note below.

Pub. L. 99–651, §102(a)(1), substituted “in accordance with this section. Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation. Each plan shall provide the following:” and pars. (1) to (3) for prior provisions which read as follows: “(1) who is charged with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation, (2) who is under arrest, when such representation is required by law, (3) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, as provided in subsection (g), (4) whose mental condition is the subject of a hearing pursuant to chapter 313 of this title, or (5) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel. Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial proportion of cases, either of the following or both:

“(1) attorneys furnished by a bar association or a legal aid agency; or

“(2) attorneys furnished by a defender organization established in accordance with the provisions of subsection (h).”

Subsec. (b). Pub. L. 99–651, §102(a)(2), substituted “In every case in which a person entitled to representation under a plan approved under subsection (a)” for “In every criminal case in which the defendant is charged with a felony or a misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation and” and substituted “person” for “defendant” and “persons” for “defendants” wherever appearing.

Subsec. (d)(1). Pub. L. 99–651, §102(a)(3)(A), substituted “court, unless the Judicial Conference determines that a higher rate of not in excess of \$75 per hour is justified for a circuit or for particular districts within a circuit, for time expended in court or before a United States magistrate and for time expended out of court. The Judicial Conference shall develop guidelines for determining the maximum hourly rates for each circuit in accordance with the preceding sentence, with variations by district, where appropriate, taking into account such factors as the minimum range of the prevailing hourly rates for qualified attorneys in the district in which the representation is provided and the recommendations of the judicial councils of the circuits. Not less than 3 years after the effective date of the Criminal Justice Act Revision of 1986, the Judicial Conference is authorized to raise the maximum hourly rates specified in this paragraph up to the aggregate of the overall average percentages of the adjustments in the rates of pay under the General Schedule made pursuant to section 5305 of title 5 on or after such effective date. After the rates are raised under the preceding sentence, such maximum hourly rates may be raised at intervals of

not less than 1 year each, up to the aggregate of the overall average percentages of such adjustments made since the last raise was made under this paragraph. Attorneys” for “court. Such attorney”.

Subsec. (d)(2). Pub. L. 99–651, §102(a)(3)(B), substituted “\$3,500” for “\$2,000”, “\$1,000” for “\$800”, “\$2,500” for “\$2,000”, and substituted provision that for any other representation required or authorized by this section, the compensation shall not exceed \$750 for each attorney in each proceeding, for provision that for representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding or for representation provided under subsection (g) the compensation could not exceed \$500 for each attorney in each proceeding in each court.

Subsec. (d)(3). Pub. L. 99–651, §102(a)(3)(C), inserted provision that the chief judge of the circuit may delegate such approval authority to an active circuit judge.

Subsec. (d)(4). Pub. L. 99–651, §102(a)(3)(D), substituted “provided representation to the person involved” for “represented the defendant”.

Subsec. (e)(1). Pub. L. 99–651, §102(a)(4)(A), substituted “adequate representation” for “an adequate defense”.

Subsec. (e)(2). Pub. L. 99–651, §102(a)(4)(B), designated existing provisions as subpar. (A), and substituted reference to adequate representation for reference to an adequate defense, inserted exception relating to subpar. (B), increased the authorized amount for services from \$150 to \$300, and added subpar. (B).

Subsec. (e)(3). Pub. L. 99–651, §102(a)(4)(C), substituted “\$1,000” for “\$300” and inserted provision that the chief judge of the circuit may delegate such approval authority to an active circuit judge.

Subsec. (g). Pub. L. 99–651, §102(b)(1), redesignated subsec. (h) as (g), and struck out former subsec. (g) which provided for discretionary appointments by the court or magistrate.

Subsec. (g)(2)(A), formerly (h)(2)(A). Pub. L. 99–651, §102(a)(5)(A), substituted “in accordance with section 605 of title 28” for “similarly as under title 28, United States Code, section 605, and subject to the conditions of that section”, and after fourth sentence inserted provision authorizing the continuation in office, upon a majority vote of the judges of the court of appeals, of a Federal Public Defender whose term has expired until appointment of a successor or until one year after the expiration of such Defender's term, whichever is earlier.

Subsec. (g)(2)(B), formerly (h)(2)(B). Pub. L. 99–651, §102(a)(5)(B), substituted “for the next fiscal year” for “for the coming year” in introductory provisions.

Subsec. (g)(3), formerly (h)(3). Pub. L. 99–651, §102(a)(5)(C), added par. (3).

Subsec. (h). Pub. L. 99–651, §102(b)(1), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Subsec. (i). Pub. L. 99–651, §102(a)(6), (b)(1), redesignated subsec. (j) as (i) and inserted provision for funding continuing education and training of persons providing representational services under this section. Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 99–651, §102(b), redesignated subsec. (k) as (j), and amended subsec. (j) generally to include the District Court for the Northern Mariana Islands. Former subsec. (j) redesignated (i).

Subsecs. (k), (l). Pub. L. 99–651, §102(a)(7), (b)(1), redesignated subsec. (l) as (k) and substituted “this section shall apply” for “this Act, other than subsection (h) of section 1, shall apply” and “this section shall not apply” for “this Act shall not apply”. Former subsec. (k) redesignated (j).

1984—Subsec. (a). Pub. L. 98–473, §405(a), added cl. (4) and redesignated former cl. (4) as (5).

Subsec. (a)(1)(A). Pub. L. 98–473, §223(e)(1), as amended by Pub. L. 99–651, §103, substituted “Class A misdemeanor” for “misdemeanor (other than a petty offense as defined in section 1 of this title)”.

Subsec. (a)(1)(E) to (I). Pub. L. 98–473, §223(e)(2), as amended by Pub. L. 99–651, §103, redesignated subpars. (F) to (I) as (E) to (H), respectively, and struck out former subpar. (E) which required that representation be provided for any financially eligible person who was entitled to appointment of counsel in parole proceedings under chapter 311 of this title.

Subsec. (a)(2)(A). Pub. L. 98–473, §223(e)(3), as amended by Pub. L. 99–651, §103, substituted “Class B or C misdemeanor, or an infraction” for “petty offense”.

Subsec. (d)(1). Pub. L. 98–473, §1901(1)–(3), substituted “\$60” for “\$30” and “\$40” for “\$20”, and struck out “, or such other hourly rate, fixed by the Judicial Council of the Circuit, not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district” at end of first sentence.

Subsec. (d)(2). Pub. L. 98–473, §1901(4)–(6), substituted “\$2,000” for “\$1,000” in two places, “\$800” for “\$400”, and “\$500” for “\$250”.

Subsec. (g). Pub. L. 98–473, §405(b), struck out reference to section 4245 of title 18.

1982—Subsec. (h)(2)(A). Pub. L. 97–164, §206(a), substituted “court of appeals” for “judicial council” wherever appearing and “court of appeals of the circuit” for “Judicial Council of the Circuit”.

Subsec. (i). Pub. L. 97–164, §206(b), substituted “court of appeals” for “judicial council”.

1974—Subsec. (l). Pub. L. 93–412 substituted “shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this Act shall not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals”, for “shall be applicable in the District of Columbia”, and struck out provisions that the plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals.

1970—Subsec. (a). Pub. L. 91–447, §1(a), expanded coverage of district court plan for furnishing representation to financially disabled persons to include defendants charged with violation of probation, any person under arrest when such representation is required by law, any person who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief as provided in subsec. (g) of this section, and any person for whom the Sixth Amendment to the Constitution requires appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel, and required each plan to include a provision for participation by private attorneys in a substantial proportion of cases, as well as permitting attorneys to be furnished by bar, legal aid, or defender organizations in accordance with subsec. (h) of this section.

Subsec. (b). Pub. L. 91–447, §1(a), provided for appointment of counsel from a bar association, legal aid agency, or defender organization as well as from a panel of attorneys approved by the court, expanded advice to defendant of right to appointment of counsel where defendant is charged with juvenile

delinquency by the commission of an act which, if committed by an adult, would be a felony or misdemeanor or with violation of probation, and provided for appointment of counsel to be retroactive so as to include any representation furnished pursuant to the plan prior to appointment.

Subsec. (c). Pub. L. 91–447, §1(a), expanded the scope of representation by appointed counsel to include ancillary matters appropriate to the proceedings.

Subsec. (d). Pub. L. 91–447, §1(a), raised the rate of compensation not to exceed \$30 per hour for time expended in court and \$20 per hour for time reasonably expended out of court, increased the limit to \$1,000 for each attorney in a case involving one or more alleged felonies and \$400 for each attorney in a case in which one or more misdemeanors are charged, established a \$1,000 maximum for each attorney in each court for cases on appeal and provided a \$250 maximum for each attorney for representation in connection with a post-trial motion, probation revocation proceedings and matters covered by subsec. (g) such as parole revocation and collateral relief proceedings, provided for waiver of maximum amounts and payment in excess of those amounts for extended or complex representation upon approval of the chief judge of the circuit, provided for separate claims of compensation to be submitted to the appropriate court, thus a U.S. magistrate fixes compensation in cases before him, appellate court fixes compensation in cases before it and in all other instances claims are to be made to the district court, provided a court order granting a new trial is deemed to initiate a new case for the purpose of compensation, and facilitate appellate proceedings by allowing a defendant for whom counsel is appointed to appeal or petition for a writ of certiorari without prepayment of fees and cost of security therefore and without filing the affidavit required by section 1915(a).

Subsec. (e). Pub. L. 91–447, §1(a), limited to \$150, plus reasonable expenses, subject to later review and approval by the court, the cost of investigative, expert, or other services necessary for an adequate defense where these services are obtained without prior authorization because circumstances prevented counsel from securing prior court authorization, maintained existing limit on payment for authorized services at a \$300 maximum but permitted waiver of that maximum if the court certifies that payment in excess of that limit is necessary to provide fair compensation, and provided that the amount of any excess payment must be approved by the chief judge of the circuit.

Subsec. (f). Pub. L. 91–447, §1(a), substantially reenacted subsec. (f).

Subsecs. (g) to (k). Pub. L. 91–447, §1(b), added subsecs. (g) and (h) and redesignated existing subsecs. (g) to (i) as (i) to (k), respectively.

Subsec. (l). Pub. L. 91–447, §1(c), added subsec. (l).

1968—Subsecs. (b) to (d). Pub. L. 90–578 substituted “United States magistrate” for “United States commissioner” wherever appearing.

CHANGE OF NAME

“United States magistrate judge” substituted for “United States magistrate” wherever appearing in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(1) [title III, §308(b)], Nov. 29, 1999, 113 Stat. 1535, 1501A–37, provided that: “This section [amending this section] shall apply to all disclosures made under section

3006A(d) of title 18, United States Code, related to any criminal trial or appeal involving a sentence of death where the underlying alleged criminal conduct took place on or after April 19, 1995.”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–132, title IX, §903(c), Apr. 24, 1996, 100 Stat. 1318, provided that: “The amendments made by this section [amending this section and section 848 of Title 21, Food and Drugs] apply to—

“(1) cases commenced on or after the date of the enactment of this Act [Apr. 24, 1996]; and

“(2) appellate proceedings, in which an appeal is perfected, on or after the date of the enactment of this Act.”

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–182, §26, Dec. 7, 1987, 101 Stat. 1272, provided that: “The amendments made by this Act [amending this section, sections 3553, 3561, 3563, 3564, 3583, 3663, 3672, 3742, and 4106 of this title, section 994 of Title 28, Judiciary and Judicial Procedure, and sections 504 and 1111 of Title 29, Labor, enacting provisions set out as notes under sections 3551 and 3553 of this title, rule 35 of the Federal Rules of Criminal Procedure, set out in the Appendix to this title, and section 994 of Title 28, and amending provisions set out as a note under section 3551 of this title] shall apply with respect to offenses committed after the enactment of this Act [Dec. 7, 1987].”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–651, title I, §105, Nov. 14, 1986, 100 Stat. 3646, provided that: “This title and the amendments made by this title [amending this section and section 1825 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under this section] shall take effect one hundred and twenty days after the date of enactment of this Act [Nov. 14, 1986]. The maximum hourly rates provided in section 3006A(d)(1) of title 18, United States Code, as amended by section 102(a)(3)(A) of this Act, shall apply only to services performed on or after the effective date of this title. The maximum allowed for compensation for a case, as provided in section 3006A(d)(2) of title 18, United States Code, as amended by section 102(a)(3)(B) of this Act, shall apply only to compensation claims in which some portion of the claim is for services performed on or after the effective date of this title. The maximum compensation allowed pursuant to section 3006A(e) of title 18, United States Code, as amended by subparagraphs (B) and (C) of section 102(a)(4) of this Act, shall apply only to services obtained on or after the effective date of this title.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 223(e) of 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.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–412, §4, Sept. 3, 1974, 88 Stat. 1093, provided in part that the amendment of subsec. (l) of this section by Pub. L. 93–412 shall take effect on Sept. 3, 1974.

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–447, §3, Oct. 14, 1970, 84 Stat. 920, provided that: “The amendments made by section 1 of this Act [amending this section] shall become effective one hundred and twenty days after the date of enactment [Oct. 14, 1970].”

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90–578 on Oct. 17, 1968, see section 403 of Pub. L. 90–578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–651, title I, §101, Nov. 14, 1986, 100 Stat. 3642, provided that: “This title [amending this section and section 1825 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under this section] may be referred to as the ‘Criminal Justice Act Revision of 1986’.”

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–473, title II, Oct. 12, 1984, 98 Stat. 2185, provided in part that: “This chapter [chapter XIX (§1901) of title II of Pub. L. 98–473, amending this section] may be cited as the ‘Criminal Justice Act Revision of 1984’.”

SHORT TITLE

Pub. L. 88–455, §1, Aug. 20, 1964, 78 Stat. 552, provided: “That this Act [enacting this section and provisions set out as a note under this section] may be cited as the ‘Criminal Justice Act of 1964.’ ”

SAVINGS PROVISION

Pub. L. 97–164, title II, §206(c), Apr. 2, 1982, 96 Stat. 53, provided that: “The amendments made by subsection (a) of this section [amending subsec. (h)(2)(A) of this section] shall not affect the term of existing appointments.”

AWARD OF ATTORNEY'S FEES AND LITIGATION EXPENSES TO DEFENSE

Pub. L. 105–119, title VI, §617, Nov. 26, 1997, 111 Stat. 2519, provided that: “During fiscal year 1998 and in any fiscal year thereafter, the court, in any criminal case (other than a case in which the defendant is represented by assigned counsel paid for by the public) pending on or after the date of the enactment of this Act [Nov. 26, 1997], may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust. Such awards shall be granted pursuant to the procedures and limitations (but not the burden of proof) provided for an award under section 2412 of title 28, United States Code. To determine whether or not to award fees and costs under this section, the court, for good cause shown, may receive evidence ex parte and in camera (which shall include the submission of classified evidence or evidence that reveals

or might reveal the identity of an informant or undercover agent or matters occurring before a grand jury) and evidence or testimony so received shall be kept under seal. Fees and other expenses awarded under this provision to a party shall be paid by the agency over which the party prevails from any funds made available to the agency by appropriation. No new appropriations shall be made as a result of this provision.”

GOVERNMENT RATES OF TRAVEL FOR CRIMINAL JUSTICE ACT ATTORNEYS AND EXPERTS

Pub. L. 102–572, title VII, §702, Oct. 29, 1992, 106 Stat. 4515, provided that: “The Administrator of General Services, in entering into contracts providing for special rates to be charged by Federal Government sources of supply, including common carriers and hotels (or other commercial providers of lodging) for official travel and accommodation of Federal Government employees, shall provide for charging the same rates for attorneys, experts, and other persons traveling primarily in connection with carrying out responsibilities under section 3006A of title 18, United States Code, including community defender organizations established under subsection (g) of that section.”

STUDY OF FEDERAL DEFENDER PROGRAM

Pub. L. 101–650, title III, §318, Dec. 1, 1990, 104 Stat. 5116, as amended by Pub. L. 102–198, §9, Dec. 9, 1991, 105 Stat. 1626, directed Judicial Conference of the United States to conduct a study of effectiveness of Federal defender program and to transmit a report on results of study to Committees on the Judiciary of Senate and House of Representatives no later than Mar. 31, 1993, with report to include recommendations for legislation, a proposed formula for compensation of Federal defender program counsel, and suggestions for procedural and operational changes by courts.

FUNDS FOR PAYMENT OF COMPENSATION AND REIMBURSEMENT

Pub. L. 101–45, title II, §102, June 30, 1989, 103 Stat. 122, provided in part: “That compensation and reimbursement of attorneys and others as authorized under section 3006A of title 18, United States Code, and section 1875(d) of title 28, United States Code, may hereinafter be paid from funds appropriated for ‘Defender Services’ in the year in which payment is required.”

CERTIFICATION BY ATTORNEY GENERAL TO ADMINISTRATIVE OFFICE OF UNITED STATES COURTS OF PAYMENT OF OBLIGATED EXPENSES

Pub. L. 95–144, §5(c), Oct. 28, 1977, 91 Stat. 1222, provided that: “The Attorney General shall certify to the Administrative Office of the United States Courts those expenses which it is obligated to pay on behalf of an indigent offender under section 3006A of title 18, United States Code, and similar statutes.”

POWER AND FUNCTION OF A UNITED STATES COMMISSIONER

Pub. L. 91–447, §2, Oct. 14, 1970, 84 Stat. 920, provided that a United States commissioner for a district could exercise any power, function, or duty authorized to be performed by a United States magistrate under the amendments made by section 1 of Pub. L. 91–447, which amended this section, if such commissioner had authority to perform such power, function, or duty prior to the enactment of such amendments.

SUBMISSION OF PLANS

Pub. L. 88–455, §3, Aug. 20, 1964, 78 Stat. 554, directed each district court to submit a plan in accord with section 3006A of this title and the rules of the Judicial Conference of the United States to the judicial

council of the circuit within 6 months from Aug. 20, 1964, further directed each judicial council to approve and send to the Administrative Office of the United States courts a plan for each district in its circuit within 9 months from Aug. 20, 1964, and also directed each district court and court of appeals to place its approved plan in operation within 1 year from Aug. 20, 1964.

¹ *See References in Text note below.*

² *So in original. Probably should be “United States magistrate judge”.*