

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART II - CRIMINAL PROCEDURE
CHAPTER 207 - RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

§ 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

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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.)

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.

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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

Section 51(c) of Pub. L. 99-646 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.