

FEDERAL COURTS IMPROVEMENT ACT OF 2005

109th CONGRESS

SECTION-BY-SECTION ANALYSIS

TITLE I—JUDICIAL PROCESS IMPROVEMENTS

SEC. 101. EMERGENCY AUTHORITY TO CONDUCT COURT PROCEEDINGS OUTSIDE THE TERRITORIAL JURISDICTION OF THE COURT.

This section would authorize circuit, district, and bankruptcy courts to conduct special sessions outside their respective geographic boundaries upon a finding by the respective chief judge (or, if unavailable, the most senior active judge who is available) or the judicial council of the circuit, that, because of emergency conditions, no locations within the boundaries of those courts are reasonably available where such special sessions could be held. United States magistrate judges are currently subject to certain territorial limitations on their powers imposed by the Federal Magistrates Act, 28 U.S.C. § 631, *et seq.* Subsection (d) of this proposed section would make clear that magistrate judges can participate in the emergency extraterritorial sessions of district courts as authorized under subsection (b).

The need for this legislation has become apparent following the terrorist attacks of September 11, 2001, and the impact of these disasters on court operations, in particular in New York City. In emergency conditions, a federal court facility in an adjoining district (or circuit) might be more readily and safely available to court personnel, litigants, jurors, and the public than a facility at a place of holding court within the district. This is particularly true in major metropolitan areas such as New York, Washington, D.C., Dallas, and Kansas City, where the metropolitan area includes parts of more than one judicial district. The advent of electronic court records systems will facilitate implementation of this authority by providing judges, court staff, and attorneys with remote access to case documents.

SEC. 102. CHANGE IN COMPOSITION OF DIVISIONS OF WESTERN DISTRICT OF TEXAS.

This provision would amend the jurisdiction of two divisions of the Western District of Texas by removing Hudspeth County from the Pecos Division and including it in the El Paso Division. The change is sought because increased law enforcement activities in the District's border counties continue to result in increased criminal filings. Three major border checkpoints are located in Hudspeth County, which is directly adjacent to the El Paso Division. These checkpoints are closer to El Paso than they are to Pecos (by approximately 135, 105, and 50 miles respectively), and most of the law enforcement agents responsible for these checkpoints

live in El Paso. In addition, although the prosecution of these cases occurs in Pecos, counsel usually travels from El Paso. Moreover, El Paso is better equipped to handle the burgeoning workload, as it is where two new judgeships will be filled. Thus, this amendment would benefit defendants, counsel, and law enforcement agencies, reduce travel costs, and increase the cost effectiveness of administering justice in the district. The United States Attorney for the Western District of Texas supports the proposal.

SEC. 103. CHANGE IN COMPOSITION OF DIVISIONS OF WESTERN DISTRICT OF TENNESSEE.

This section amends section 123(c) of title 28, United States Code, to move Dyer County from the Western Division of the Western District of Tennessee to the Eastern Division. The section further provides that court for the Eastern Division shall be held at Dyersburg and Jackson. Currently, court for the Eastern Division is held only at Jackson. Dyersburg is removed as a place of holding court for the Western Division.

Dyersburg, the largest city in Dyer County, is approximately 75 miles from Memphis, the location of the Western Division court. However, Dyersburg is only 47 miles from Jackson, the location of the Eastern Division court. A drive from Dyersburg to Memphis takes approximately two hours, but a drive from Dyersburg to Jackson requires less than one hour. In addition, there is a new four-lane highway between Dyersburg and Jackson, which results in a very easy drive. The judges of this court are in agreement that this transfer would result in a convenience to litigants, lawyers, and jurors from Dyer County. Even more importantly, the court would realize a significant savings resulting from reduced juror mileage fees. The Dyer County Bar Association surveyed its membership concerning the proposed transfer of Dyer County. According to the president of the Dyer County Bar Association at that time, there was overwhelming support for the proposal.

SEC. 104. SUPPLEMENTAL ATTENDANCE FEE FOR PETIT JURORS SERVING ON LENGTHY TRIALS.

This section amends 28 U.S.C. §1871(b)(2) by shortening the number of days that a juror is required to serve before he or she is eligible for the supplemental daily fee authorized by the section. Currently, a juror who is required to serve more than thirty days is permitted to receive an additional ten dollars a day, above the established juror fee of forty dollars. The economic hardship associated with jury service worsens the longer jurors are required to serve, especially if service continues for more than a week. This amendment recognizes that fact by reducing to five days the time before jurors could qualify for the supplemental fee.

The projected additional cost for FY 2006 for the supplemental daily fee authorized by this section would be approximately \$2 million. Therefore, enactment of this legislation would require a commensurate increase in the fees of jurors appropriations account.

SEC. 105. AUTHORITY OF DISTRICT COURTS AS TO A JURY SUMMONS.

This section would amend 28 U.S.C. § 1866(g) to clarify that a court may, but is not required to, follow up on individuals who do not respond to the jury selection process.

Under the traditional “two-step” jury selection process, qualification questionnaires and summonses are mailed to prospective jurors separately. For those who do not respond to the questionnaires, 28 U.S.C. § 1864(a) provides that they “*may*” be called into court to fill out the form. For those who fail to respond to a summons, however, 28 U.S.C. § 1866(g) provides that they “*shall*” be ordered into court to show cause for their non-compliance.

Pursuant to 28 U.S.C. § 1878, however, 22 districts have combined these two steps into a “one-step” jury selection process, whereby questionnaires and summonses are sent out simultaneously. Section 1878(b) expressly provides that “no challenge . . . shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure.” Nonetheless, as long as section 1866(g) contains the word “*shall*,” challenges that a jury was unlawfully empaneled can be expected to continue. *See United States v. Hsia*, 125 F.Supp.2d (D.D.C. 2001). This amendment will still allow a court to take appropriate action against those who do not respond to a jury summons. However, the amendment leaves the decision of how to handle non-responders to the discretion of each court, guided by its own circumstances and experiences. The amendment also makes the provision gender-neutral.

SEC. 106. ELIMINATION OF THE PUBLIC DRAWING REQUIREMENTS FOR JUROR WHEELS.

This section eliminates the noticing and public drawing requirements for selecting names from jury wheels. The Jury Act at 28 U.S.C. §§ 1864(a) and 1866(a) currently states that the clerk shall “publicly draw at random” from the names of persons required for jury service. “Publicly draw” is defined in 28 U.S.C. § 1869(k) as a “drawing which is conducted . . . after reasonable public notice and which is open to the public.” Because computers have replaced the physical drawing of names, and because the public has little or no interest today in attending a jury drawing, this section would eliminate the requirement to post a separate notice for each drawing from the master and qualified wheels, as well as the requirement to draw names publicly and/or to post public notices. Instead, one general notice would be posted in the clerk’s office that explains the process by which names are randomly and periodically drawn from the wheels.

The Jury System Improvements Act of 1978, Pub. L. No. 95-572, authorized the Judicial Conference to adopt regulations governing the drawing of juror names from the jury wheels when a drawing is made by electronic data processing. Accordingly, the Conference has adopted regulations that take into account the changes in jury selection resulting from technological advances. The Conference regulations narrowed the meaning of “public drawing” to apply only to the selection of the starting number and interval (quotient) during the process of selecting juror names from the original source lists. The Conference did not require any public observance of the actual computer operations, interpreting the term “reasonable public notice” to mean the posting of a written announcement of the drawing from the master and qualified wheels on a bulletin board or another public place at the courthouse.

With advanced computer technology, more courts are moving to a purely randomized method for selecting juries. Indeed, the new Jury Management System developed by the Administrative Office of the U.S. Courts for all of the courts will perform the selection of names from the master and qualified jury wheels by a purely randomized process approved by the National Institute of Standards and Technology.

SEC. 107. CONDITIONS OF PROBATION AND SUPERVISED RELEASE.

As part of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, Congress amended title 18, *inter alia*, by renumbering and amending the discretionary conditions of probation listed in section 3563(b), but failed to conform section 3563(a) (containing the mandatory conditions of probation) to that amendment. Therefore, the references in section 3563(a) to section 3563(b) are now erroneous. The amendment in subsection (a) of this provision corrects this technical error, thereby restoring congressional intent.

Subsection (b) corrects the same oversight as to 18 U.S.C. § 3583(d) (which delineates the conditions of supervised release) that is corrected in subsection (a). When 18 U.S.C. § 3563(b) was amended in 1996, the cross reference found in 18 U.S.C. § 3583(d) was not conformed to that amendment. The amendment in subsection (b) corrects this technical error.

Subsection (b) also makes an amendment to the conditions of supervised release. Prior to the 1996 legislation, intermittent confinement was available as a condition of probation, but not of supervised release. Experience since 1996 has demonstrated that this form of confinement (custody by the Bureau of Prisons during nights, weekends, or other intervals of time) is appropriate in certain circumstances. However, this provision recognizes several appropriate limitations on the use of intermittent confinement in this context. First, its use should be limited, as in the case of probation, to the first year of supervision. Second, it should be ordered only when Bureau of Prisons facilities are available to accommodate the individual in question. Third, it should be available only as a sanction for a supervised release violation as an option for the court that is less severe than revocation of supervised release.

Subsection (c) amends the section providing for intermittent confinement to clarify that its provisions, including the temporal limitations on its imposition, apply to supervised release as well as to probation.

SEC. 108. REPORTING OF WIRETAP ORDERS.

Currently, 18 U.S.C. § 2519(1) requires that federal and state judges submit a report to the Administrative Office of the U.S. Courts no later than 30 days after the expiration of an approved order, or the denial of an order, for a wiretap. Certain judges submit numerous reports to the Administrative Office throughout the year. For example, one state judge in 1999 approved 70 wiretap orders, and therefore, was required to submit 70 separate reports. By contrast, federal and state prosecutors are required by 18 U.S.C. § 2519(2) to submit information relating to wiretap orders they applied for during the entire preceding calendar year only once each January.

The individual reports submitted by judges are not processed by the Administrative Office until the prosecutors submit their summary reports. The prosecutor's reports are then matched to the judge's reports to complete the set of information published by the Administrative Office in the annual *Wiretap Report*.

The proposed amendment would permit judges to submit annual summary reports on wiretap orders acted on during the previous calendar year, just as prosecutors do. This would simplify the reporting requirements for the judges and their staffs, without affecting the accuracy or timeliness of the reporting required by the statute.

SEC. 109. REPEAL OF OBSOLETE SPEEDY TRIAL ACT CROSS REFERENCES TO THE NARCOTIC ADDICT REHABILITATION ACT.

This provision amends 18 U.S.C. § 3161 to remove cross references to the now repealed 28 U.S.C. § 2902. The Children's Health Act of 2000, Pub. L. No. 106-310, Div. B, § 3405(c)(1), 114 Stat. 1221 (Oct. 17, 2000), repealed chapter 175 of title 28, United States Code (28 U.S.C. §§ 2901-2906), which was entitled, "Civil Commitment and Rehabilitation of Narcotics Addicts." The repeal of chapter 175 of title 28 eliminated long-obsolete provisions of title 28 that were enacted as title I of the Narcotic Addict Rehabilitation Act, Pub. L. No. 89-793, 80 Stat. 1438 (Nov. 8, 1966), which had not been used in decades since programs under that Act were completely defunded in the late 1970's. *See discussion in United States v. Butler*, 676 F. Supp. 88 (W.D. Pa. 1988). There remain, however, three references to 28 U.S.C. § 2902 in the provisions of the Speedy Trial Act, namely, 18 U.S.C. § 3161(h)(1)(B), (h)(1)(C), and (h)(5), which should be stricken from this statute.

SEC. 110. IMPROVEMENTS IN FLEXIBILITY AND EFFICIENCY IN THE ESTABLISHMENT, ADJUSTMENT AND COLLECTION OF CRIMINAL FINES AND ORDERS OF RESTITUTION.

This section provides for most fines and/or orders or restitution in criminal offenses to be treated as civil debts, payable immediately and collectable by the Department of Justice or the victim. This treatment would expand debt collection techniques, maximize collection levels and minimize the need for courts to repeatedly intervene to adjust payment schedules.

Restitution became part of the federal sentencing structure with the passage of the Victim and Witness Protection Act of 1982 (VWPA), Pub. L. No. 97-291, codified at 18 U.S.C. §§ 3663-3664. The Mandatory Victims Restitution Act of 1996 (MVRA), Pub. L. No. 104-132, among other things, made restitution mandatory for certain crimes and significantly amended pre-existing restitution enforcement provisions in 18 U.S.C. §§ 3572 and 3664. A series of court of appeals decisions over the past decade interpreting the restitution scheme set forth in the VWPA and MVRA has made the collection of fines and restitution more difficult and time consuming for judges. Essentially, these decisions have required judges to set schedules for the payment of restitution at the time of sentencing. But establishing a realistic schedule at sentencing, particularly for defendants who will serve periods of incarceration, is difficult at best. A defendant's earning ability is uncertain at the time of sentencing and highly volatile thereafter.

To deal with this uncertainty, many courts simply specified a restitution amount and stipulated that it must be paid as determined by the probation officer. This device allowed for a significant level of flexibility and efficiency, at least at the outset of the payment schedule. The officer could assess the offender's earning ability on an ongoing basis and make upward or downward adjustments to the payment requirements as warranted by the offender's economic circumstances.

Nonetheless, eleven circuits determined that "delegation" of the function of setting restitution or fine payment schedules to the probation officer is unauthorized. Most of these decisions have been based upon explicit language of the MVRA. For example, section 3664(f)(2) requires the court, pursuant to section 3572 ("Imposition of a sentence of fine and related matters"), to specify "the manner in which, and the schedule according to which, the restitution is to be paid." Section 3664(f)(3)(A) provides that the court may direct the defendant to make a single lump-sum payment, partial payments pursuant to a schedule, or a combination of partial and in-kind payments. If the defendant is unable to make payments that are reasonably calculated to result in the payment of the entire amount of restitution ordered, section 3664(f)(3)(B) permits the court to order nominal payments. Pursuant to section 3664(k), the court may adjust a payment schedule because of a change in the defendant's financial circumstances.

Courts have held that this language explicitly imposes a non-delegable duty upon judges to determine the manner of payment of restitution. This "non-delegation doctrine" has also been applied to the payment of fines, based upon the similar language of 18 U.S.C. § 3572(d), which provides that the defendant shall pay a fine immediately, but that the court may, in the interests of justice, provide for payment on a date certain or in installments. The non-delegation rationale has also been applied to efforts to allow the Bureau of Prisons to begin to collect restitution during incarceration.

When it became apparent that courts of appeals would not allow sentencing courts to delegate the responsibility of establishing payment schedules to probation officers, it was suggested that as an alternative the court simply order the immediate payment of the entire amount of restitution. Such an order would not require immediate payment of the entire amount when that was impossible. Rather, the amount would simply be deemed "due" and the offender would be obliged to make payments to the best of his or her ability. The Seventh Circuit in *United States v. Ahmad*, 2 F.3d 245 (7th Cir. 1993), explained how this process would work:

A judgment in civil litigation specifies the amount due without elaboration. If immediate payment proves impossible, accommodation will occur in the course of collection. A judgment creditor will garnish the judgment debtor's wages and collect incrementally, even though the court has not said a word about installments. Just so with criminal restitution. If the sentence specifies the amount of restitution, without elaboration, and makes payment a condition of probation or supervised release, the probation officer will assess the defendant's progress toward satisfaction of his debt, and if the defendant is not paying what he can the probation officer will ask the judge to revoke or alter the terms of

release. Then the judge may make the order more specific or, if the defendant has not paid what he could in good faith, may send him back to prison. Everything works nicely without any effort to establish installments on the date of sentencing and without delegating a judicial function to the probation officer.

Id. at 249. The approach to make “payment to begin immediately” was recommended in *Criminal Monetary Penalties: A Guide to the Probation Officer’s Role*, Monograph 114, Ch. V, (approved for distribution by the Judicial Conference, and incorporated into the Conference-approved September 2000 version of the Judgment in a Criminal Case (AO 245B), Sheet 5. See JCUS–SEP 00, p. 49). In its *Prosecutor’s Guide to Criminal Monetary Penalties* (May 2003), citing *Ahmad*, the Executive Office for United States Attorneys also recommended that, except in circuits that explicitly require the setting of a payment schedule and in cases in which the defendant can pay the entire penalty at the time of sentencing, the government should support a “general imposition” of the payment obligation pursuant to which payment would begin immediately.

Nonetheless, more courts have held that this approach, which originally was suggested in connection with the VWPA, runs afoul of the MVRA’s requirements. These decisions reason that an immediate payment of the entire amount may not be ordered unless the defendant has the actual ability to pay immediately.

The interpretation of the payment provisions of sections 3664 and 3572 have made it very difficult for probation officers, the courts, and the Bureau of Prisons to maximize the collection of money towards the criminal financial obligations of defendants. The requirement that a payment schedule be set at sentencing, perhaps years before the defendant is free to become employed and to make significant contributions towards his restitution sentence, makes such a schedule extremely imprecise.

The solution endorsed by the Judicial Conference in March 2004 would provide that restitution and fines¹ be treated as civil debts, payable immediately and collectable by the Department of Justice or the victim. This process is consistent with the suggestion in *Ahmad* and Monograph 114. It would essentially decriminalize debt collection and apply well-established and efficient civil debt collection techniques to the collection of criminal debts. In so doing, it likely would maximize the amounts collected.

Section 3613 of title 18, United States Code, already provides for a number of civil procedures for the collection of fines and restitution, including a provision in section 3613(b) that preserves liability for 20 years after the entry of judgment or after release from imprisonment. Thus, treating criminal financial penalties as civil debts would provide a seamless transition in collection from supervision to post-supervision. Indeed, former Senator Spencer Abraham (R-MI) proposed a similar solution in legislation introduced in the 105th

¹ Special assessments are collectable as fines, so any change to the fine collection provisions would apply to special assessments. 18 U.S.C. § 3013(b).

Congress. *See* 143 Cong. Rec. S2838-01 (S. 518, the “Victim Restitution Enforcement Act of 1997”).

The payment of restitution and fines would be made a condition of supervision to be monitored by the probation officer with the assistance of the United States Attorney’s Financial Litigation Unit. Courts would retain the authority to set payment schedules at sentencing, but would no longer be required to do so. Section (k) of section 3664 is revised to eliminate the need for a district court to adjust any payment plan after sentencing. Under current 18 U.S.C. § 3572(i), a default on any fine or restitution payment makes the entire amount due within thirty days of notification of default. Thus, in the event of a payment lapse and default, the United States would either accommodate the debtor to obtain payment or initiate civil collection proceedings. The court would retain authority, however, to impose sanctions for a willful failure to pay upon the motion of the government or petition from the probation officer. The revision removes the present requirement in section 3664(f)(2) that the court establish at sentencing a schedule according to which restitution is to be paid. In all cases, the amount owed will be payable immediately and the United States and Bureau of Prisons will be authorized to enforce the restitution order through civil collection mechanisms and the Inmate Financial Responsibility Program, respectively.

The MVRA changed section 3572(d)(2) of title 18, United States Code, to read in part that “the length of time over which scheduled payments will be made shall be set by the court.” Courts have interpreted this language, and other provisions in section 3664, to impose a non-delegable duty on a district court to set detailed payment schedules at sentencing. The amendments in proposed subsection 112(b) would treat a fine or restitution amount as a civil debt payable immediately. They delete the requirement that a district court set a payment schedule at sentencing, while retaining the authority of the court to specify installment payments. Even in cases where a court has imposed installment payments, however, the United States and Bureau of Prisons will be authorized to enforce the restitution order through civil collection mechanisms and the Inmate Financial Responsibility Program.

SEC. 111. AUTHORITY OF BANKRUPTCY ADMINISTRATORS TO APPOINT TRUSTEES AND TO SERVE AS TRUSTEES IN BANKRUPTCY CASES IN THE STATES OF ALABAMA AND NORTH CAROLINA.

This section provides that the bankruptcy administrators in Alabama and North Carolina shall have the same authority as that exercised by United States trustees in all other states. The bankruptcy administrator program was established in the judicial districts in Alabama and North Carolina pursuant to section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554. Expanding the duties of bankruptcy administrators would free bankruptcy judges from an administrative role in their cases, furthering one of the central goals of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598. This will improve the efficiency and effectiveness of the bankruptcy administrators in facilitating the work of the court to the same degree that United States trustees have done so in the other 48 states.

SEC. 112. REPEAL OF OBSOLETE PROVISIONS OF THE BANKRUPTCY CODE RELATING TO INCREASES IN FILING FEES.

This section repeals subsection (a) of section 104, title 11, United States Code, and renumbers current subsection (b) accordingly. This amendment is necessary because subsection 104(a) has become superfluous and obsolete. Section 104(a) requires the Judicial Conference of the United States to “transmit to the Congress and to the President before May 1, 1985, and before May 1 of every sixth year after May 1, 1985, a recommendation for the uniform percentage adjustment of each dollar amount in [title 11] and in section 1930 of title 28.” (Section 1930 of title 28, United States Code, prescribes bankruptcy filing fees and miscellaneous fees for the bankruptcy courts.)

Section 104(a) was enacted as part of the original Bankruptcy Code in 1978 to provide a means by which various dollar amounts specified in the Bankruptcy Code² and the filing fees enumerated in section 1930 of title 28 could be maintained at fairly consistent, real dollar levels. If acted upon by Congress, a recommendation by the Judicial Conference pursuant to subsection 104(a) would increase every dollar figure specified in the Bankruptcy Code and all bankruptcy fees. Subsequent amendments to the Bankruptcy Code and to section 1930 of title 28, however, have made a uniform increase in dollar amounts and fees impracticable.

The judiciary is no longer the sole recipient of fees collected pursuant to section 1930 of title 28. In 1986, Congress converted the United States trustee pilot program into a self-funded, national program under the authority of the Department of Justice. U.S. trustee program funds are generated from a portion of the bankruptcy filing fees collected pursuant to section 1930 of title 28. Additionally, Congress added subsection (a)(6) to section 1930 to provide quarterly fee payments to the United States trustee system from all chapter 11 cases filed in U.S. trustee districts. Therefore, any subsection 104(a) recommendation by the Judicial Conference to effect a uniform percentage adjustment of fees collected under the authority of section 1930 of title 28 would affect the fees collected by the Department of Justice’s United States trustee program.

In 1994, Congress added a new subsection (b) to section 104 of title 11, providing for the periodic, automatic adjustment of many of the specific dollar amounts enumerated in the Bankruptcy Code. These adjustments are made at three-year intervals, and are calculated based upon the inflation changes in the consumer price index. An automatic adjustment to dollar amounts pursuant to subsection 104(b) last occurred on April 1, 2004.

A uniform percentage adjustment enacted pursuant to a section 104(a) recommendation would apply indiscriminately to all bankruptcy fees and dollar amounts, including the following: dollar amounts that are automatically adjusted pursuant to section 104(b); filing fees collected by the bankruptcy courts; quarterly fees collected by the United States trustee in chapter 11 cases; and fees collected for the United States trustee system and chapter 7 trustees. A rigid uniform

² Some of these dollar amounts are contained in section 326 (limitation on compensation of trustee), section 507 (priority unsecured debts) and section 522 (exemptions).

percentage increase would create odd results (with increases, for example, of less than whole dollars) and would result in greater disparities than currently exist among the various fees. Therefore, the Judicial Conference no longer recommends a blanket adjustment of dollar amounts and fees. The Judicial Conference has preferred a more selective approach to fee increases under section 1930 of title 28, which, in conjunction with the automatic adjustments pursuant to section 104(b), gives the judiciary discretion in balancing its fiscal responsibilities with its responsibility to keep the courts accessible and does not affect fees collected by the Department of Justice.

Repeal of section 104(a) of title 11 would have no negative effect upon the judiciary or the United States trustee program because alternative means exist and are utilized to adjust bankruptcy fees and dollar amounts. It is foreseeable that future subsection 104(a) reports would recommend no uniform adjustment of dollar amounts and fees.³ Repeal of section 104(a), therefore, would relieve the Judicial Conference of the statutory duty to submit a subsection 104(a) recommendation to Congress every six years. This would be a prudent savings of taxpayer dollars that would otherwise be expended to repeatedly generate and submit the same recommendation.

SEC. 113. VENUE IN BANKRUPTCY CASES.

This provision amends section 1412 of title 28, United States Code, to clarify that a district court or a bankruptcy court exercising original jurisdiction under section 157 of title 28, United States Code, may raise an issue of venue *sua sponte*. Section 1412, at present, neither explicitly allows nor explicitly prohibits a district court or bankruptcy court from raising an issue of venue *sua sponte*. Federal Rule of Bankruptcy Procedure 1014 implements the venue statute. The Rule only contains the phrase “on timely motion by a party in interest.” The incongruence between the statute and Rule has caused confusion. Currently, courts in some districts raise the issue of venue *sua sponte*, while others do not.

While multiple fora may be permissive locations for filing a bankruptcy case, it is important that courts have the authority to meet the policy goals of preventing forum shopping and promoting an economic, efficient, and effective administration of that case. The Judicial Conference believes that amending the statute to clarify that the courts have the power to raise this issue *sua sponte* furthers those goals, and promotes the uniform application of the law. For example, if a debtor company, with its primary business and the vast majority of its creditors and

³ In compliance with section 104(a) of title 11, the judiciary has transmitted to Congress four recommendations regarding uniform adjustment of dollar amounts. The 1985 recommendation cited no need for adjustment due to Congress’ opportunity to review the dollar amounts when enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353. The 1991 recommendation stated that all amounts that had not been adjusted since 1979 should be increased in accordance with the inflation rate. In 1997, the judiciary recommended no adjustment to the dollar amounts based, in part, upon adjustments made by Congress in the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394. In 2003, the judiciary recommended no uniform adjustment of dollar amounts due to adjustments made pursuant to section 104(b). The next report is due in May 2009.

employees in a particular state, has its bankruptcy petition filed in another, geographically removed state, the resulting bankruptcy proceeding could impose significant burdens upon the parties in interest and may not result in the most efficient or effective administration of the bankruptcy. With the enactment of this section, the court, on its own motion or on a timely motion of a party in interest, may transfer a bankruptcy case or proceeding to a district court for another district in the interest of justice or for the convenience of the parties.

SEC. 114. TAXING OF COURT TECHNOLOGY COSTS.

This section would incorporate some of the expenses associated with new courtroom technologies into the assessment of litigation costs against a losing party as provided by 28 U.S.C. § 1920. Currently, section 1920 allows a court to include certain limited costs (such as fees of the clerk, marshal, and court reporter; fees for witnesses; court appointed experts, and interpreters; and fees for docketing, printing and copying of papers necessarily obtained for use in the case) into the final judgement or decree of a case. This amendment would update the section to recognize that transcripts are available in electronic form as well as in hard copy. It would also expand the concept of “papers” in order to reflect the decreasing use of paper and the increasing use of technology in creating, filing, and exchanging court documents. It would not, however, permit the taxing of costs associated with the use of technology to create, assist, enhance, or present materials during a trial.

SEC. 115. INVESTMENT OF COURT REGISTRY FUNDS.

This provision would enhance options available to a court for investing registry funds by allowing purchases from a wider range of Treasury securities, and it would also reduce the administrative costs of managing these funds. Registry funds are funds received by the courts in the course of litigation. The United States district and bankruptcy courts presently hold about \$3.5 billion in registry funds on behalf of thousands of litigants, witnesses, and other participants in court proceedings. Registry funds are paid into the federal courts to secure judgments or appearance bonds, to begin interpleader or land condemnation actions, and for other judicial purposes. The funds are held and administered by the clerk of the court pending the resolution of the litigation. The registry funds are deposited in accordance with section 2041 of title 28, United States Code, into interest-bearing accounts (*e.g.*, certificates of deposit) at financial institutions that have qualified as designated depositories of public moneys in accordance with 31 C.F.R. Part 202. The courts also purchase short-term Treasury bills with registry funds. When the courts purchase these bills on the secondary market, the choice of investment instruments is limited and they must pay transaction fees.

This section would broaden the courts’ investment options and offer an improved procedure for investing in Treasury securities. For example, under the Treasury’s Government Account Series (GAS) program, there are no transaction fees, transactions may be posted daily, and a wider range of Treasury securities is available than the secondary market offers. Also, GAS has full-featured, on-line transaction facilities. Participation in the GAS program would help to reduce the courts’ costs in administering registry funds.

SEC. 116. MAGISTRATE JUDGE PARTICIPATION AT CIRCUIT CONFERENCES.

This section amends section 333 of title 28, United States Code, to include magistrate judges among the judicial officers who may by statute be summoned to attend circuit judicial conferences. Magistrate judges conduct a wide variety of pretrial proceedings in criminal and civil cases and try civil cases with consent of the parties. Magistrate judges are regularly invited by chief circuit judges to attend circuit judicial conferences in all circuits. They were not included in section 333 upon its enactment in 1939 because the modern office of magistrate judge was not created until 1968. The amendment updates the statute to reflect the significant contributions of magistrate judges to the federal courts and the value of their attendance at circuit judicial conferences where the business of the courts in each circuit is considered.

SEC. 117. ATTORNEY CASE COMPENSATION MAXIMUM AMOUNTS.

The Criminal Justice Act (CJA) provides maximum amounts, based on the type of case, for representation of a defendant by a private attorney. *See* 18 U.S.C. § 3006A(d)(2). This section would amend the CJA to adjust the case compensation maximums in proportion to, and simultaneously with, any increase in the hourly attorney compensation rate. A raise in the hourly rate, without a corresponding adjustment in the case compensation maximums, results in appointed counsel reaching the CJA's compensation ceiling with fewer hours of representational services having been furnished. This provision would eliminate the need for periodic statutory amendments to the CJA to raise the case compensation maximum amounts as the hourly rate increases. It would also ease the administrative burden on the judiciary in reviewing claims in excess of the maximum amounts, as provided under subsection (d)(3) of the CJA, and assist in providing fair compensation for panel attorneys while reducing unnecessary delays in providing their payments.

**TITLE II—JUDICIARY PERSONNEL ADMINISTRATION,
BENEFITS, AND PROTECTIONS**

SEC. 201. JUDICIAL BRANCH SECURITY REQUIREMENTS.

This section would enhance the ability of the Judicial Conference to determine the security required for the protection of judges, court employees, law enforcement officers, jurors, and other members of the public who are regularly in federal courthouses and other buildings used by the Judicial Branch. The judiciary has the ability to make a determination of its requirements in all other areas of operations. Only in security, perhaps the most critical area, does the judiciary lack the authority to determine basic requirements.

Currently, the primary responsibility of the U.S. Marshals Service (USMS) is to provide for the security of the courts, coordinating such efforts with the Department of Homeland Security to achieve this objective. In recent years, the judiciary has been transferring to the USMS increasing amounts of funding for court security officers and courthouse security

equipment from the judiciary court security appropriation. Yet, the Judicial Conference currently lacks sufficient information from the USMS to fully participate in assessing the effectiveness of the security program upon which the judiciary so heavily depends.

The judiciary seeks to work cooperatively with the USMS in setting security requirements, as required by statute. In order for the judiciary to participate in the determination of security requirements, the judiciary will need information from the USMS including, for example, the current security standards, the allocation of personnel, analyses regarding equipment, and resource needs. This information is necessary to help the judiciary determine weaknesses and potential improvements in its security. It will also help the judiciary to provide support for the USMS budget throughout each funding cycle.

This section would not alter the responsibility of the USMS for protection of the judiciary in buildings occupied by the courts, consistent with a 2004 memorandum of understanding between the Department of Homeland Security, the Department of Justice, and the Administrative Office of the U.S. Courts, under which authority has been delegated to the USMS for the security of federal courthouses. The USMS would still be responsible for the security of the judges and the court facilities. Examples of security requirements which the judiciary could determine include the need for deputy marshals in certain proceedings and whether electronic devices should be allowed into courthouses.

This section provides the Director of the Administrative Office of the U.S. Courts with the authority to “determine” judiciary security needs. That determination is not intended to mean that the USMS is required by law to implement what the determination or assessment may be. It also does not mean that Congress is under some obligation to fund what the judiciary “determines” it needs. However, it is important for the judiciary to have a voice in setting its own security requirements.

SEC. 202. PROTECTION AGAINST MALICIOUS RECORDING OF FICTITIOUS LIENS AGAINST FEDERAL JUDGES.

In recent years, federal judges have been victimized by persons seeking to intimidate or harass them by the filing of false liens against the judge’s real or personal property. These liens are usually filed in an effort to harass a judge who has presided over a criminal or civil case involving the filer, or who has otherwise acted against the interests or perceived interests of the filer, his family, or his acquaintances. These liens are also filed to harass a judge against whom a civil action has been initiated by the individual who has filed the lien. Often, such liens are placed on the property of judges based on the allegation that the property is at issue in the lawsuit. While the incidences of filing such liens have occurred in all regions of the country, they are most prevalent in Washington and other western states.

The responsibility to initiate legal action to remove these liens typically falls upon Assistant United States Attorneys (AUSAs), who represent the judges. The types of legal responses vary according to the state law and the circumstances. It is sometimes necessary for the AUSA to bring an action in state court for the removal of liens. In some circumstances, an

action to remove the liens may be brought in federal court, and in others, state court proceedings are commenced and removed to federal court under the provisions of 28 U.S.C. §§ 1441 and 1452. In some cases, the AUSA may seek an injunction against further filing of liens by the litigant. All of these methods are difficult and time consuming.

The pendency of these liens prior to their removal has caused some judges great inconvenience and personal financial difficulty. There is no current federal statute under which persons engaging in this tactic may be prosecuted. Thus, a new federal criminal sanction is needed to deter the practice. This proposal would create a new provision in the federal criminal code, punishing any person who files a false lien or encumbrance against the property of any federal judge. The new statute would provide a maximum sentence on the first offense of up to five years.

SEC. 203. JUDGES FIREARMS TRAINING.

Threats against federal judges continue at a disturbing rate. The U.S. Marshals Service (USMS) provides security for judges inside all U.S. courthouses and personal 24-hour guard details for judges in certain circumstances. However, these two circumstances aside, security of judges is a personal matter. For that reason, many judges carry concealed firearms. The laws of forty-two states permit this.

The Judicial Conference does not believe it is prudent for judges who carry firearms to do so without effective professional training, or without regular certification of proficiency as a condition precedent for carrying a weapon. All state and federal law enforcement officers receive such training and certification. Federal judges should be required to do so as well.

This section would require, as a legal condition precedent to carrying a firearm, that judges be trained and certified in a firearms use and safety program provided by the USMS with the cooperation of the Judicial Conference. The Department of Justice and the USMS support the enactment of this section.

The proposal in this section would only preempt state firearms laws, as a practical matter, in rare circumstances. Currently, federal judges are carrying firearms pursuant to the state laws where they reside and sit. If this section is enacted, those judges would be carrying firearms pursuant to federal law, but there would be little else affected in these cases as a result of this proposal. The actual, practical effects of the proposal are limited. First, it would be lawful for a judge who is in official travel status to carry a concealed weapon in a state where the judge is not licensed to do so. Interstate official travel by judges is rare, except in the case of a very small number of appeals court judges. The section specifies that judges are not authorized to carry firearms on aircraft or other common carriers. A second change would be that judges, like federal law enforcement officers, could carry firearms in the eight states without statutes allowing this activity, if the judge sits, resides, or is present in that state on official travel status.

SEC. 204. SELECTION OF CHIEF PRETRIAL SERVICES OFFICERS.

The purpose of this section is to conform the relatively complex procedure for the appointment of a chief pretrial services officer with the straightforward method for appointing chief probation officers.

The appointment of a chief probation officer is accomplished under the sole direction of the district court. Pursuant to 18 U.S.C. § 3602, a district court may appoint qualified persons to serve as probation officers within the jurisdiction and under the direction of a court making such appointment. If a court appoints more than one probation officer, one may be designated by the court as chief probation officer and shall direct the work of all probation officers serving in the judicial district.

By contrast, chief pretrial services officers in districts with separate pretrial services offices are appointed by a panel consisting of the chief judge of the circuit, the chief judge of the district, and a magistrate judge of the district, or their designees, pursuant to 18 U.S.C. § 3152(c). The legislative history suggests that a vote of at least two of the three panel members is necessary for the panel to exercise its authority. S. Rep. No. 97-77, 97th Cong., 1st Sess., at 11, May 13, 1981. The removal of a chief pretrial services officer is generally effected by the panel required for appointment, though the current statute is not specific on this point.

Convening a panel to appoint a chief pretrial services officer is time consuming and inconvenient. By comparison, the procedure for choosing chief probation officers is efficient and logical. The chief probation officer serves the district court, and the district court has the greatest interest in choosing a qualified chief. The same considerations apply to the chief pretrial services officer. Thus, the appointment process for the two positions should be identical, as proposed by this section.

SEC. 205. INTENTIONAL TORT COVERAGE OF UNITED STATES PROBATION AND PRETRIAL SERVICE OFFICERS.

This section seeks to amend 28 U.S.C. § 2680(h) of the Federal Tort Claims Act (28 U.S.C. § 2671 *et seq.* (FTCA)) to explicitly provide that both probation officers and pretrial services officers are considered law enforcement officers within the meaning of that section. Absent the proposed revision, there is a risk that pretrial services officers and probation officers would not be covered by the FTCA for claims alleging intentional torts because they do not unambiguously fall within the current definition of “investigative or law enforcement officer[s].”

Section 2680(h) excludes intentional torts from its coverage with the exception of such torts committed by investigative and law enforcement officers, who retain coverage notwithstanding that a claim arises out of an intentional tort. 28 U.S.C. § 2680(h). The section defines an “investigative or law enforcement officer” as “any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.” Unlike probation officers, pretrial services officers are not authorized by statute to make arrests, and while some pretrial services officers have conducted searches pursuant to court-ordered pretrial release conditions, they do not routinely conduct searches.

As a result, even though pretrial services officers are considered law enforcement officers for most purposes, they may not be considered law enforcement officers for purposes of the FTCA. Accordingly, they may not be covered by the FTCA if sued for committing an intentional tort such as assault. This lack of coverage removes the possibility of administrative remedies in such a case and could even result in personal liability on the part of the officer.

Probation officers are technically authorized to arrest an offender under supervision for a violation of the conditions of release (18 U.S.C. § 3606), though *The Supervision of Federal Offenders*, Monograph 109 (approved by the Judicial Conference for publication and distribution to the courts), indicates that such arrests are discouraged. JCUS-MAR 93, p. 13. In addition, while case law suggests that federal probation officers may conduct searches, and many probation officers do conduct searches, some district courts have determined that officers in those districts should not conduct searches. Accordingly, it is not entirely clear that probation officers are covered as law enforcement officers under the FTCA.

To assure that the judiciary's law enforcement officers are covered by these provisions of the FTCA, 28 U.S.C. § 2680(h) should be amended to explicitly provide that both probation officers and pretrial services officers are considered law enforcement officers within the meaning of that section.

SEC. 206. REPEAL OF REQUIREMENT FOR ADDITIONAL LEGISLATIVE ACTION REGARDING JUDICIAL COMPENSATION.

This section eliminates an unnecessary and unjustifiable affirmative legislative step required to authorize salary adjustments for federal judges when the same salary adjustments have already been approved for Members of Congress and Executive Schedule officials.

The Ethics Reform Act of 1989 (28 U.S.C. § 461(a)) provides that judges' salaries will be adjusted annually by an amount equal to the percentage change in the Employment Cost Index (ECI), but it can be no higher than the pay adjustment for General Schedule employees. Public Law No. 97-92, a joint resolution of Congress making further continuing appropriations for the fiscal year 1982, included a rider, section 140, requiring that, notwithstanding any other act, judges may only receive a salary increase "as may be specifically authorized by Act of Congress." Although contrary to the intent of the Ethics Reform Act of 1989, this section was not specifically repealed by that Act. As a result, unless Congress complies with section 140, judges may be denied the same ECI adjustment received by Members of Congress, Executive Schedule officials, and nearly all other government employees.

This provision repeals section 140 of Pub. L. No. 97-92. Section 140 creates an unequal situation in which judges, unlike Members of Congress and Executive Schedule employees, are not eligible for an annual automatic ECI adjustment. The issue over section 140 is not whether judges should or should not receive a COLA – it is a process issue, one of **fairness**. Repeal of section 140 merely places judges on an equal footing with Members of Congress and Executive Schedule employees who are currently eligible for automatic, annual ECI adjustments.

SEC. 207. BANKRUPTCY, MAGISTRATE, AND TERRITORIAL JUDGES LIFE INSURANCE.

This provision would correct an inequity in the treatment of bankruptcy, magistrate, and territorial court judges with regard to their life insurance benefits that are provided to all Article III judges as well as the Article I judges of the Court of Federal Claims. Prior to October 1998, Article III judges had the exclusive right to carry full Federal Employees' Group Life Insurance (FEGLI) coverage into retirement, and many judges relied on this coverage in developing their financial and estate plans. In 1998, after Congress enacted legislation expanding this benefit to all federal employees, the Office of Personnel Management proposed rate changes in FEGLI premiums that would significantly increase for judges the cost of maintaining the insurance and, for older judges, make continued coverage prohibitively expensive. To minimize the impact of this regulatory change, Congress enacted legislation, Pub. L. No. 106-113 (the "FEGLI fix"), authorizing the Director of the Administrative Office, on direction of the Judicial Conference, to pay the cost of any increase.

The Federal Courts Improvement Act of 2000, Pub. L. No. 106-518, included a provision extending the "FEGLI fix" to the Article I judges of the Court of Federal Claims. This section would extend that benefit to bankruptcy, magistrate, and territorial judges.

SEC. 208. HEALTH INSURANCE FOR SURVIVING SPOUSES AND FAMILY OF JUDGES.

This provision extends to the surviving spouses and family of federal judges the same eligibility already enjoyed by all other federal employees to continue health care insurance coverage. Federal retirees (Executive Branch and congressional employees) and the surviving members of their family (defined in 5 U.S.C. § 8901(5) as "the spouse of an employee or annuitant and an unmarried dependent child under 22 years of age") retain their eligibility for Federal Employees Health Benefits (FEHB) coverage at the same cost as current employees.

This section would provide a similar benefit to the surviving family members of judges. It would apply to surviving spouses and family of a federal Justice, judge, territorial judge, judge of the Court of Federal Claims, bankruptcy judge, or full-time magistrate judge.

SEC. 209. DISABILITY RETIREMENT AND COST-OF-LIVING ADJUSTMENTS OF ANNUITIES FOR TERRITORIAL JUDGES.

This provision would create equitable treatment for territorial judges in their disability retirement coverage and cost-of-living annuities adjustments that is currently provided for all other non-Article III judges. The judges of the district courts of Guam, the Northern Mariana Islands, and the Virgin Islands are appointed by the President and confirmed by the Senate for ten-year terms. Retirement benefits for territorial judges are set forth in 28 U.S.C. § 373. Under this provision, a territorial judge may retire from office under any of the following three circumstances: (1) after meeting the same "rule of 80" age and service requirements applicable to Article III judges; (2) after serving at least 10 years, if removed by the President solely on grounds of mental or physical disability; or (3) at the end of a term, if not reappointed. An

annuity equal to the pre-retirement salary, or prorated, in cases of disability or failure of reappointment, for judges with less than 15 years of service, is payable beginning at the time of retirement or upon attaining the age of 65 years, whichever is later. For judges who retire under the "rule of 80," the annuity is subject to the same cost-of-living adjustments (COLAs) as annuities payable under the Civil Service Retirement System, provided that such adjustments cannot result in a total annuity greater than 95 percent of an Article III judge's salary.

The retirement arrangements for these territorial judges compare unfavorably with analogous provisions for bankruptcy judges, magistrate judges, and judges of the Court of Federal Claims (compare 28 U.S.C. § 373 with 28 U.S.C. §§ 178 and 377) in that territorial judges cannot retire if removed from office by the President on disability grounds before completing 10 years of service (as compared with five years for other non-Article III judges) and, even then, no annuity is payable until age 65 (no age restriction for other judges). Also, territorial judges not retired at age 65 or older with combined age and service year totals equal to eighty ("rule of 80") do not get COLAs, and even those retired under the "rule of 80" do not get COLAs until salaries of active judges have increased enough to accommodate the 95 percent limitation. There is no rationale for perpetuating these differences between territorial judges and other non-Article III judges.

In addition, 28 U.S.C. § 373(c)(4) currently appears to permit only those recalled territorial judges who retired on a "rule of 80" basis to receive the same compensation, travel, and other expenses as a judge on active duty with the court, in lieu of their annuities.

Accordingly, subsection (1) of this section makes a technical amendment to section 373(c)(4) that reflects the fact that any territorial judge retiring under 28 U.S.C. § 373 may elect to be a "senior judge" eligible for recall service and, therefore, should be eligible to receive the same compensation as an active judge on the court being served.

Subsection (2) of this section eliminates existing inequities between territorial judges and magistrate judges and bankruptcy judges by permitting territorial judges with five or more years of service to retire on an immediate disability annuity. The annuity would be equal to 40 percent of salary if the judge has less than ten years of service, and would be adjusted upward in the proportion that the number of years of service bears to fifteen for service of ten years or more.

Subsection (3) of this section applies the COLA provisions of title 5 to all retired territorial judges, subject only to the limitation that the annuity may not exceed the salary of a judge in regular active service with the court on which the retired judge served before retiring.

SEC. 210. FEDERAL JUDICIAL CENTER PERSONNEL MATTERS.

This amendment would restore the historic parity in the salary levels of the Federal Judicial Center's senior staff and that of the Administrative Office of the United States Courts by authorizing the Director of the Center to set the compensation of a limited number of Center professional employees at levels equivalent to Level IV of the Executive Schedule pay rates.

The proposed language would limit the Federal Judicial Center to increases in four positions. The amendment also corrects a misspelling in the original statute.

SEC. 211. ANNUAL LEAVE LIMIT FOR JUDICIAL BRANCH EXECUTIVES.

The amendment in this section is designed to afford senior executives in the courts and the Federal Judicial Center the same right to leave carryover (720 hours) as that enjoyed by employees in comparable positions in the Executive Branch and in the Administrative Office. It would make applicable to these executives the 720-hour maximum carryover amount of annual leave established for members of the Executive Branch's Senior Executive Services in the Government Management Reform Act of 1994, Pub. L. No. 103-356, and for senior executives in the Administrative Office, as a result of the Administrative Office of the United States Courts Personnel Act of 1990, Pub. L. No. 101-474.

The amendment would affect approximately 400 court unit executives, including circuit executives, clerks of the courts of appeals, district court clerks, district court executives, bankruptcy court clerks, the clerk of the Court of International Trade, the clerk of the United States Court of Federal Claims, chief probation officers, chief pretrial services officers, senior staff attorneys, chief preargument attorneys, bankruptcy administrators, and circuit librarians. It would also affect five positions in the Federal Judicial Center.

SEC. 212. SUPPLEMENTAL BENEFITS PROGRAM.

The purpose of this section is to authorize the judiciary to provide its employees with a benefits package that is more competitive with those already provided throughout the private sector, state governments, colleges and universities, and the banking agencies in the Executive Branch. The Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation recognized the need to improve benefits and were granted authority by Congress to offer these same enhanced benefits.

In January 2001 the General Accounting Office issued a report, "High-Risk Series: An Update" (GAO-01-263), which describes four key challenges to the federal government as an employer. Paramount among them was "acquiring and developing staffs whose size, skills, and deployment meet agency needs." The judiciary, like the rest of the federal government, must recruit and retain employees with the proper skill mix in a competitive labor market. Over the next five years, the judiciary is at risk to lose 40 percent of its employee population to retirement. Also, the judiciary faces the additional challenges of recruiting staff nationwide, including in competitive labor markets in major urban areas.

The Judicial Conference of the United States has concluded that a comprehensive benefit program which responds to the current and future needs of the judiciary's workforce is essential to allow the judiciary to compete for the skilled employees that make up that workforce. The need for this authority is urgent. Severe budget constraints will only allow this program to be gradually implemented over a period of years. The personnel management problem it is intended to ameliorate is fast approaching.

SEC. 213. EXCESS COMPENSATION DELEGATION AUTHORITY.

This section expands the delegation authority of the chief judge of the court of appeals with respect to approving vouchers in excess of the statutory maximums submitted by panel attorneys and investigative, expert, and other service providers. *See* 18 U.S.C. § 3006A(d)(3) and (e)(3); 21 U.S.C. § 848(q)(10)(B). Chief judges of the circuits currently review and approve vouchers in excess of the statutory maximums after the court before which the services were provided certifies that the excess amount is necessary to provide fair compensation. The proposed amendments would widen the pool (now limited to active circuit judges) of possible individuals to whom the chief judge may delegate such approval authority to include any senior circuit judge or an “appropriate non-judicial officer qualified by training and legal experience.” The amendments also provide that a claimant may seek review by the circuit chief judge of a reduction made by any delegate in the amount that had been certified as necessary for fair compensation by the court before which the services were provided. The judiciary believes that the expanded delegation will accomplish the goal of enhanced supervision without compromising judicial responsibility for ensuring fair compensation for panel attorneys and other service providers.

In 1986, in response to a request from the circuit chief judges, the judiciary proposed and Congress enacted amendments to subsections (d)(3) and (e)(3) of the Criminal Justice Act, 18 U.S.C. § 3006A, to provide that the chief judge of the circuit may delegate the excess compensation approval authority to an active circuit judge. At that time, the chief judges had expressed concern regarding the administrative burden of reviewing excess claim vouchers. Currently, with the large growth in the number of excess compensation claims, the circuit chief judges have indicated that the administration of the compensation system would be further enhanced by expanded delegation authority. By broadening the pool of persons to whom the chief judge may delegate his or her excess compensation approval authority, the chief judge will be better able to designate a person whose background fully equips him or her to decide upon the appropriate amounts of compensation for the services rendered. Moreover, in requiring that any non-judge designee be qualified by training and legal experience, the proposed amendments ensure accountability and effectiveness in voucher review. As a further safeguard for fair compensation, the amendments permit an attorney or other service provider to seek the circuit chief judge’s review of a reduction made by the delegate.

SEC. 214. TRANSPORTATION AND SUBSISTENCE FOR CRIMINAL JUSTICE ACT DEFENDANTS.

This section would amend 18 U.S.C. § 4285 to give courts the authority to order the United States Marshals Service (USMS) to furnish transportation and subsistence for defendants returning home from court proceedings, and subsistence while attending such proceedings, including successive court appearances. The statute currently authorizes courts to order the USMS to provide a released defendant with noncustodial transportation and subsistence to the court where that individual’s appearance is required, when the interests of justice would be served and the client is financially unable to pay transportation costs.

This proposal would eliminate the present anomaly. While there is authority to bring noncustodial indigent defendants to court, there is no authority to provide the wherewithal to allow them to return to their homes, or obtain food and lodging during court proceedings or on the return trip. This section would provide the presiding judge with discretion to order the payment of reasonable travel and subsistence expenses for a defendant who may need the assistance. A preliminary estimate indicates that the cost of such travel and subsistence would be approximately \$450,000 annually. When so ordered, such expenses would be paid by the USMS from funds authorized by the Attorney General for such expenses.