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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

JUL 3 1991

J. RICH LEONARD, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

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ORDER ESTABLISHING PROCEDURES FOR COMMITMENTS PURSUANT TO 18 U.S.C.
§§ 4245 AND 4246 AND FOR TERMINATIONS AND MODIFICATIONS OF CONDI-
TIONAL RELEASES

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In order to promote the expeditious handling of proceedings brought under 18 U.S.C. § 4245 and § 4246 and for termination and modification of conditional releases, the following procedures are hereby adopted:

A. MENTAL ILLNESS COMMITMENTS PURSUANT TO 18 U.S.C. §§ 4245 AND 4246.

1. In cases brought under 18 U.S.C. § 4245, at the time the government files a motion for hearing regarding the present mental condition of the person, the government will attach to the motion both an initial psychiatric assessment and a proposed order for the court.

In cases brought under 18 U.S.C. § 4246, at the time of the initial filing of the certificate of mental disease or defect and dangerousness by the director of the facility in which the prisoner is incarcerated, the director will attach to the certificate both an initial psychiatric assessment and a proposed order for the court.

2. The initial psychiatric assessment will be completed by the prisoner's treating psychiatrist or psychologist at FCI-Butner and will include that health professional's assessment and recommendation concerning the prisoner's mental condition. This will enable the court to have a concise and relevant summary of the prisoner's mental condition at the time of the filing of the certificate or motion.

3. A proposed order will also be attached to the certificate or motion in order to expedite the commitment process. The proposed order will order the appointment of a representative for the prisoner, order the appointment of an additional mental health examiner selected by the prisoner if requested, and schedule a hearing date as soon as possible after two weeks from the date of the initial filing of the order in section 4245 cases and schedule a hearing date as soon as possible after four weeks from the date of the initial filing of the order in section 4246 cases.

4. The prisoner's court-appointed representative or attorney and additional mental health expert selected by the prisoner will be allowed to review and copy the prisoner's record. The record may be shown to the prisoner in the discretion of the attorney or mental health expert. Provided, however, the Bureau of Prisons may, by motion, seek a protective order to prevent the disclosure of any document, the disclosure of which it contends would be harmful to the prisoner or others.

5. There being no doctor-patient relationship between the additional mental health examiner and the prisoner, the United States Attorney shall be permitted to verbally communicate with the additional mental health expert appointed at the prisoner's request.

6. The additional mental health expert selected by the prisoner shall submit his or her report to the court, with a copy to the United States Attorney's Office, not later than 12 o'clock noon on the last business day preceding the scheduled hearing.

7. The fees and costs of the additional mental health examiner shall be paid by the Department of Justice. (It is noted that the United States Attorney contests the authority of this court to order the payment of said fees and that question is being presented to the United States Court of Appeals in the cases of United States v. Cox and School, 90-671-HC-BR and 90-710-HC-BR. This paragraph of this order is subject to change depending on the ruling by the Court of Appeals in those cases.)

B. ADDITIONAL PROCEDURAL CHANGES FOR CASES BROUGHT UNDER 18 U.S.C. §§ 4245 AND 4246.

Due to the short time periods recommended, it will be necessary for the additional mental health examiner selected by the prisoner and the prisoner's representative to have access to the prisoner and the prisoner's records in order to evaluate and prepare for the scheduled hearing. To ensure the necessary access to prisoners and documents, a person will be appointed by FCI-Butner to serve as a contact to coordinate representatives' visits and procure the necessary records. The staff at FCI-Butner will make the prisoner and the records available to the representative and the additional examiner any time during normal business hours at the prison. However, the representative and examiner will need to call the Institution at least 24 hours prior to their intended visitation time in order to arrange for the appropriate staff to be available. The staff will not be responsible for copying documents but will make facilities available to the representative to copy the documents needed.

In commitment proceedings pursuant to 18 U.S.C. § 4246 where the prisoner was originally incarcerated under 18 U.S.C. §

4241(d), the staff at FCI-Butner will submit the four-month report to the court of original jurisdiction two weeks prior to the expiration of the four-month period. This will give the court of original jurisdiction two weeks to determine whether to continue the evaluation period or not. Thus, it is more likely that at the end of the four-month period, the director at FCI-Butner will know whether the prisoner's incarceration has been extended under § 4241(d) prior to filing a certificate under § 4246 so that potential jurisdictional conflicts may be minimized.

C. CONDITIONAL RELEASE MODIFICATION AND TERMINATION PROCEEDINGS.

1. The original order allowing conditional release shall contain language stating that if a request to modify or terminate the conditions of the release is made, the party so requesting shall submit adequate documentation supporting the request and the request and documentation shall be forwarded to the court which ordered the conditional release, the United States Attorney's Office involved in the conditional release, and the prisoner's representative.

2. When the court receives the request for conditional release modification or termination, the court will file an order scheduling a date for hearing within thirty (30) days of receipt of the requested modification or termination.

3. Upon receipt of the request by the United States Attorney's Office, the Assistant United States Attorney assigned to the case will refer the matter to the mental health staff at FCI-Butner. The role of the doctor at FCI-Butner will be one of performing a records review. The doctor will review the records and give a written response as to his recommendation or concurrence with the requested modification or termination. Once this response is received from the doctor at FCI-Butner, the Assistant United States Attorney will submit it to the court and the prisoner's representative.

4. After the prisoner's representative has received the written response, the representative's office shall confer with the prisoner and the mental health expert proposing the conditional release modification or termination and determine whether the parties all agree or whether the requested termination or modification will be challenged by any party. The prisoner's representative shall file with the court a document stating what type of hearing he or she believes to be necessary and what witnesses he or she intends to call at the hearing.

ENTERED for the court, this 2nd day of July 1991.

I certify the foregoing to be a true and correct copy of the original.

J. Rich Leonard, Clerk
United States District Court
Eastern District of North Carolina

By [Signature]
Deputy Clerk

[Signature]
JAMES C. FOX
Chief U.S. District Judge