Public Law 94-64
94th Congress

An Act

July 31, 1975
[H.R. 6799]

To approve certain of the proposed amendments to the Federal Rules of Criminal Procedure, to amend certain of them, and to make certain additional amendments to those Rules.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Rules of Criminal Procedure Amendments Act of 1975".

Federal Rules of Criminal Procedure Admendments Act of 1975. 18 USC 3771 note.

SEC. 2. The amendments proposed by the United States Supreme Court to the Federal Rules of Criminal Procedure which are embraced in the order of that Court on April 22, 1974, are approved except as otherwise provided in this Act and shall take effect on December 1, 1975. Except with respect to the amendment to Rule 11, insofar as it adds Rule 11(e)(6), which shall take effect on August 1, 1975, the amendments made by section 3 of this Act shall also take effect on December 1, 1975.

Effective dates. 18 USC 3771 note.

18 USC app.

SEC. 3. The Federal Rules of Criminal Procedure, as amended by the amendments that were proposed by the United States Supreme Court to the Federal Rules of Criminal Procedure which are embraced by the order of that Court on April 22, 1974, are further amended as follows:

Warrant or summons upon complaint.

(1) Rule 4 is amended by striking out subdivisions (a), (b), and (c), and inserting in lieu thereof the following:

"(a) ISSUANCE.—If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

"(b) PROBABLE CAUSE.—The finding of probable cause may be based upon hearsay evidence in whole or in part.".

(2) Rule 4 is further amended by redesignating subdivision (d) as (c).

(3) Rule 4 is further amended by redesignating subdivision (e) as (d), and paragraph (3) of such subdivision is amended to read as follows:

"(3) MANNER.—The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address.".

Warrant or summons upon indictment or information.

(4) Rule 9(a) is amended to read as follows:

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"(a) ISSUANCE.—Upon the request of the attorney for the government the court shall issue a warrant for each defendant named in the information, if it is supported by oath, or in the indictment. The clerk shall issue a summons instead of a warrant upon the request of the attorney for the government or by direction of the court. Upon like request or direction he shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to the marshal or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.".

(5) Rule 11(c) is amended to read as follows: Pleas.

"(c) ADVICE TO DEFENDANT.—Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform him of, and determine that he understands, the following:

"(1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

"(2) if the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if necessary, one will be appointed to represent him; and

"(3) that he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself; and

"(4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and

"(5) that if he pleads guilty or nolo contendere, the court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement.".

(6) Rule 11(e)(1) is amended to read as follows:

"(1) IN GENERAL.—The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

"(A) move for dismissal of other charges; or

"(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

"(C) agree that a specific sentence is the appropriate disposition of the case.

The court shall not participate in any such discussions.".

(7) Rule 11(e)(2) is amended to read as follows:

"(2) NOTICE OF SUCH AGREEMENT.—If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report.".

(8) Rule 11(e)(3) is amended to read as follows:

"(3) ACCEPTANCE OF A PLEA AGREEMENT.—If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.".

(9) Rule 11(e)(4) is amended to read as follows:

"(4) REJECTION OF A PLEA AGREEMENT.—If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.".

(10) Rule 11(e)(6) is amended to read as follows:

"(6) INADMISSIBILITY OF PLEAS, OFFERS OF PLEAS, AND RELATED STATEMENTS.—Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel."

Pleadings and motions before trial.

(11) Rule 12(e) is amended to read as follows:

"(e) RULING ON MOTION.—A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.".

(12) Rule 12(h) is amended to read as follows:

"(h) EFFECT OF DETERMINATION.—If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be continued in custody or that his bail be continued for a specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect the provisions of any Act of Congress relating to periods of limitations.".

(13) Rule 12.1 is amended to read as follows:

"RULE 12.1. NOTICE OF ALIBI

"(a) NOTICE BY DEFENDANT.—Upon written demand of the attorney for the government stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within ten days, or at such different time as the court may direct, upon the attorney for the government a written notice of his intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

"(b) DISCLOSURE OF INFORMATION AND WITNESS.—Within ten days thereafter, but in no event less than ten days before trial, unless the court otherwise directs, the attorney for the government shall serve upon the defendant or his attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

"(c) CONTINUING DUTY TO DISCLOSE.—If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b), the party shall promptly notify the other party or his attorney of the existence and identity of such additional witness.

"(d) FAILURE TO COMPLY.—Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in his own behalf.

"(e) EXCEPTIONS.—For good cause shown, the court may grant an exception to any of the requirements of subdivisions (a) through (d) of this rule.

"(f) INADMISSIBILITY OF WITHDRAWN ALIBI.—Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.".

(14) Rule 12.2(c) is amended to read as follows:

"(c) PSYCHIATRIC EXAMINATION.—In an appropriate case the court may, upon motion of the attorney for the government, order the defendant to submit to a psychiatric examination by a psychiatrist designated for this purpose in the order of the court. No statement made by the accused in the course of any examination provided for by this rule, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding.".

Depositions.

(15) Rule 15(a) is amended to read as follows:

"(a) WHEN TAKEN.—Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.".

(16) Rule 15(b) is amended to read as follows:

"(b) NOTICE OF TAKING.—The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives

in writing the right to be present, produce him at the examination and keep him in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause him to be removed from the place of the taking of the deposition, he persists in conduct which is such as to justify his being excluded from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but his failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.".

Waiver.

(17) Rule 15(c) is amended to read as follows:

"(c) PAYMENT OF EXPENSES.—Whenever a deposition is taken at the instance of the government, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition, the court may direct that the expense of travel and subsistence of the defendant and his attorney for attendance at the examination and the cost of the transcript of the deposition shall be paid by the government.".

(18) Rule 15(e) is amended by striking out "as defined in subdivision (g) of this rule" and inserting in lieu thereof the following: "as unavailability is defined in Rule 804(a) of the Federal Rules of Evidence".

(19) Rule 15(g) is deleted and subdivision (h) is redesignated as (g).

Discovery and inspection.

(20) Rule 16(a)(1)(A) is amended to read as follows:

"(A) STATEMENT OF DEFENDANT.—Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon its motion, discovery of relevant recorded testimony of any witness before a grand jury who (1) was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.".

(21) Rule 16(a)(1)(B) is amended to read as follows:

"(B) DEFENDANT'S PRIOR RECORD.—Upon request of the defendant, the government shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.".

(22) Rule 16(a)(1)(D) is amended to read as follows:

"(D) REPORTS OF EXAMINATIONS AND TESTS.—Upon request of a defendant the government shall permit the defendant to inspect

and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.".

(23) Rule 16(a)(1)(E) is deleted.

(24) Rule 16(b)(1)(A) is amended to read as follows:

"(A) DOCUMENTS AND TANGIBLE OBJECTS.—If the defendant requests disclosure under subdivision (a)(1) (C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.".

(25) Rule 16(b)(1)(B) is amended to read as follows:

"(B) REPORTS OF EXAMINATIONS AND TESTS.—If the defendant requests disclosure under subdivision (a)(1) (C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.".

(26) Rule 16(b)(1)(C) is deleted.

(27) Rule 16(c) is amended to read as follows:

"(c) CONTINUING DUTY TO DISCLOSE.—If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.".

(28) Rule 16(d)(1) is amended to read as follows:

"(1) PROTECTIVE AND MODIFYING ORDERS.—Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.".

(29) Rule 17(f)(2) is amended to read as follows: Subpoena.

"(2) PLACE.—The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.".

(30) Rule 20(d) is amended to read as follows: Venue.

"(d) JUVENILES.—A juvenile (as defined in 18 U.S.C. § 5031) who is arrested, held, or present in a district other than that in which he is alleged to have committed an act in violation of a law of the United States not punishable by death or life imprisonment may, after he has been advised by counsel and with the approval of the court and the United States attorney for each district, consent to be proceeded against as a juvenile delinquent in the district in which he is arrested, held, or present. The consent shall be given in writing before the court but only after the court has apprised the juvenile of his rights, including the right to be returned to the district in which he is alleged to have committed the act, and of the consequences of such consent.".

Sentence and judgment.

(31) Rule 32(a)(1) is amended to read as follows:

"(1) IMPOSITION OF SENTENCE.—Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The attorney for the government shall have an equivalent opportunity to speak to the court.".

(32) Rule 32(c)(1) is amended to read as follows:

"(1) WHEN MADE.—The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

"The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.".

(33) Rule 32(c)(3)(A) is amended to read as follows:

"(A) Before imposing sentence the court shall upon request permit the defendant, or his counsel if he is so represented, to read the report of the presentence investigation exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity to comment thereon and, at the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report.".

(34) Rule 32(c)(3)(D) is amended to read as follows:

"(D) Any copies of the presentence investigation report made available to the defendant or his counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs.".

Presence of the defendant.

(35) Rule 43(b)(2) is amended to read as follows:

"(2) after being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded from the courtroom.".

Approved July 31, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94–247 (Comm. on the Judiciary) and No. 94–414 (Comm. of Conference).
SENATE REPORT No. 94–336 (Comm. of Conference).
CONGRESSIONAL RECORD, Vol. 121 (1975):
June 6, 16, 18, 23, considered and passed House.
July 17, considered and passed Senate, amended.
July 30, House and Senate agreed to conference report.