

Public Law 95-78
95th Congress

An Act

To approve with modifications certain proposed amendments to the Federal Rules of Criminal Procedure, to disapprove other such proposed amendments, and for other related purposes.

July 30, 1977

[H.R. 5864]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the first section of the Act entitled "An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court" (Public Law 94-349, approved July 8, 1976) the amendments to rules 6(e), 23, 24, 40.1, and 41(c)(2) of the Rules of Criminal Procedure for the United States district courts which are embraced by the order entered by the United States Supreme Court on April 26, 1976, shall take effect only as provided in this Act.

SEC. 2. (a) The amendment proposed by the Supreme Court to subdivision (e) of rule 6 of such Rules of Criminal Procedure is approved in a modified form as follows: Such subdivision (e) is amended to read as follows:

"(e) **SECRECY OF PROCEEDINGS AND DISCLOSURE.**—

"(1) **GENERAL RULE.**—A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the Government, or any person to whom disclosure is made under paragraph (2) (A) (ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of rule 6 may be punished as a contempt of court.

"(2) **EXCEPTIONS.**—

"(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to—

"(i) an attorney for the government for use in the performance of such attorney's duty; and

"(ii) such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce Federal criminal law.

"(B) Any person to whom matters are disclosed under subparagraph (A) (ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce Federal criminal law. An attorney for the government shall promptly provide the district court, before which was impaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made.

"(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

Federal Rules of Criminal Procedure, proposed amendments.
18 USC 3771 note.
28 USC 2071 note.
18 USC app.
18 USC app.

“(i) when so directed by a court preliminarily to or in connection with a judicial proceeding; or

“(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury.

“(3) SEALED INDICTMENTS.—The Federal magistrate to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon the clerk shall seal the indictment and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.”

18 USC app.

(b) The amendments proposed by the Supreme Court to subdivisions (b) and (c) of rule 23 of such Rules of Criminal Procedure are approved.

(c) The amendment proposed by the Supreme Court to rule 24 of such Rules of Criminal Procedure is disapproved and shall not take effect.

(d) The amendment proposed by the Supreme Court to such Rules of Criminal Procedure, adding a new rule designated as rule 40.1, is disapproved and shall not take effect.

(e) The amendment proposed by the Supreme Court to subdivision (c) of rule 41 of such Rules of Criminal Procedure is approved in a modified form as follows: Such subdivision (c) of the Federal Rules of Criminal Procedure is amended—

(1) by striking out

“(c) ISSUANCE AND CONTENTS.—A warrant shall” and inserting in lieu thereof the following:

“(c) ISSUANCE AND CONTENTS.—

“(1) WARRANT UPON AFFIDAVIT.—A warrant other than a warrant upon oral testimony under paragraph (2) of this subdivision shall”; and

(2) by adding at the end the following:

“(2) WARRANT UPON ORAL TESTIMONY.—

“(A) GENERAL RULE.—If the circumstances make it reasonable to dispense with a written affidavit, a Federal magistrate may issue a warrant based upon sworn oral testimony communicated by telephone or other appropriate means.

“(B) APPLICATION.—The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read such duplicate original warrant, verbatim, to the Federal magistrate. The Federal magistrate shall enter, verbatim, what is so read to such magistrate on a document to be known as the original warrant. The Federal magistrate may direct that the warrant be modified.

“(C) ISSUANCE.—If the Federal magistrate is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the Federal magistrate shall order the issuance of a warrant by directing the person requesting the warrant to sign the Federal magistrate’s name on the duplicate original warrant. The Federal magistrate shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The

finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

“(D) RECORDING AND CERTIFICATION OF TESTIMONY.—When a caller informs the Federal magistrate that the purpose of the call is to request a warrant, the Federal magistrate shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for that warrant. If a voice recording device is available, the Federal magistrate shall record by means of such device all of the call after the caller informs the Federal magistrate that the purpose of the call is to request a warrant. Otherwise a stenographic or longhand verbatim record shall be made. If a voice recording device is used or a stenographic record made, the Federal magistrate shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the Federal magistrate shall file a signed copy with the court.

“(E) CONTENTS.—The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

“(F) ADDITIONAL RULE FOR EXECUTION.—The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

“(G) MOTION TO SUPPRESS PRECLUDED.—Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this paragraph is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.”

SEC. 3. Section 1446 of title 28 of the United States Code is amended as follows:

(a) Subsection (c) is amended to read as follows:

“(c) (1) A petition for removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the petitioner leave to file the petition at a later time.

Removal petition.

“(2) A petition for removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the petition shall constitute a waiver of such grounds, and a second petition may be filed only on grounds not existing at the time of the original petition. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

“(3) The filing of a petition for removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the petition is first denied.

“(4) The United States district court to which such petition is directed shall examine the petition promptly. If it clearly appears on the face of the petition and any exhibits annexed thereto that the petition for removal should not be granted, the court shall make an order for its summary dismissal.

“(5) If the United States district court does not order the summary dismissal of such petition, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of

Hearing.

the petition as justice shall require. If the United States district court determines that such petition shall be granted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.”

(b) Subsection (e) is amended by striking out “such petition” and inserting “such petition for the removal of a civil action” in lieu thereof.

Effective dates.
18 USC 3771
note.

SEC. 4. (a) The first section of this Act shall take effect on the date of the enactment of this Act.

(b) Sections 2 and 3 of this Act shall take effect October 1, 1977.

Approved July 30, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-195 (Comm. on the Judiciary).
SENATE REPORT No. 95-354 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 123 (1977):

Apr. 19, considered and passed House.
July 25, considered and passed Senate, amended.
July 27, House concurred in Senate amendment.