§ 3433. Arraignment—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Reading and furnishing copy of indictment to accused, Rule 10.

(June 25, 1948, ch. 645, 62 Stat. 831.)

§ 3434. Presence of defendant—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Right of defendant to be present generally; corporation; waiver, Rule 43.

(June 25, 1948, ch. 645, 62 Stat. 831.)

§ 3435. Receiver of stolen property triable before or after principal

A person charged with receiving or concealing stolen property may be tried either before or after the trial of the principal offender.

(June 25, 1948, ch. 645, 62 Stat. 831.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§101, 467 (Mar. 4, 1909, ch. 321, §§48, 288, 35 Stat. 1098, 1145).

Other provisions of sections 101 and 467 of title 18, U.S.C., 1940 ed., were incorporated in sections 641 and 662 of this title.

Necessary changes were made in phraseology.

§ 3436. Consolidation of indictments or informations—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Two or more indictments or informations triable together, Rule 13.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3437. Severance—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Relief from prejudicial joinder of defendants or offenses, Rule 14.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3438. Pleas—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Plea of guilty, not guilty, or nolo contendere; acceptance by court; refusal to plead; corporation failing to appear, Rule 11.

Withdrawal of plea of guilty, Rule 32.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3439. Demurrers and special pleas in bar or abatement abolished; relief on motion—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Motion to dismiss or for appropriate relief substituted for demurrer or dilatory plea or motion to quash, Rule 12.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3440. Defenses and objections determined on motion—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Defenses or objections which may or must be raised before trial; time; hearing; effect of determination; limitations by law unaffected, Rule 12(b).

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3441. Jury; number of jurors; waiver—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Jury trial, waiver, twelve jurors or less by written stipulation, trial by court on general or special findings, Rule 23.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3442. Jurors, examination, peremptory challenges; alternates—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Examination and peremptory challenges of trial jurors; alternate jurors, Rule 24.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3443. Instructions to jury—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Court's instructions to jury, written requests and copies, objections, Rule 30.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3444. Disability of judge—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Disability of judge after verdict or finding of guilt, Rule 25.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3445. Motion for judgment of acquittal—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Motions for directed verdict abolished.

Motions for judgment of acquittal adopted; court may reserve decision; renewal, Rule 29.

(June 25, 1948, ch. 645, 62 Stat. 832.)

§ 3446. New trial—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Granting of new trial, grounds, and motion, Rule 33.

(June 25, 1948, ch. 645, 62 Stat. 832.)

CHAPTER 223—WITNESSES AND EVIDENCE

Sec.
3481. Competency of accused.
3482. Evidence and witnesses—Rule.
3483. Indigent defendants, process to produce evidence—Rule.
3484. Subpoenas—Rule.
3485. Expert witnesses—Rule.
3486. Administrative subpoenas.
[3486A. Repealed.]
3487. Refusal to pay as evidence of embezzlement.
3488. Intoxicating liquor in Indian country as evidence of unlawful introduction.
3489. Discovery and inspection—Rule.
3490. Official record or entry—Rule.
3491. Foreign documents.
3492. Commission to consular officers to authenticate foreign documents.
3493. Deposition to authenticate foreign documents.
3494. Certification of genuineness of foreign document.
3495. Fees and expenses of consuls, counsel, interpreters and witnesses.
3496. Regulations by President as to commissions, fees of witnesses, counsel and interpreters.
3497. Account as evidence of embezzlement.
3498. Depositions—Rule.
3499. Contempt of court by witness—Rule.
3500. Demands for production of statements and reports of witnesses.

Sec.
3501. Admissibility of confessions.
3502. Admissibility in evidence of eye witness testimony.
[3503. Repealed.]
3504. Litigation concerning sources of evidence.
3505. Foreign records of regularly conducted activity.
3506. Service of papers filed in opposition to official request by United States to foreign government for criminal evidence.
3507. Special master at foreign deposition.
3508. Custody and return of foreign witnesses.
3509. Child victims' and child witnesses' rights.
3510. Rights of victims to attend and observe trial.
3511. Judicial review of requests for information.
3512. Foreign requests for assistance in criminal investigations and prosecutions.

AMENDMENTS

2009—Pub. L. 111–79, § 2(5), Oct. 19, 2009, 123 Stat. 2089, added item 3512.

2006—Pub. L. 109–177, title I, § 115(1), Mar. 9, 2006, 120 Stat. 211, added item 3511.

2002—Pub. L. 107–273, div. B, title IV, § 4002(c)(3)(B), Nov. 2, 2002, 116 Stat. 1809, struck out item 3503 ''Depositions to preserve testimony''.

2000—Pub. L. 106–544, § 5(b)(2), (3), Dec. 19, 2000, 114 Stat. 2718, struck out ''in Federal health care investigations'' after ''subpoenas'' in item 3486 and struck out item 3486A ''Administrative subpoenas in cases involving child abuse and child sexual exploitation''.

1998—Pub. L. 105–314, title VI, § 606(b), Oct. 30, 1998, 112 Stat. 2985, added items 3486 and 3486A and struck out former item 3486 ''Authorized investigative demand procedures''.

1997—Pub. L. 105–6, § 2(b), Mar. 19, 1997, 111 Stat. 12, added item 3510.

1996—Pub. L. 104–294, title VI, § 604(a)(4), Oct. 11, 1996, 110 Stat. 3506, substituted ''victims'' '' for ''Victims'' '' in item 3509.

Pub. L. 104–191, title II, § 248(b), Aug. 21, 1996, 110 Stat. 2019, added item 3486.

1994—Pub. L. 103–322, title XXXIII, § 330002(j), Sept. 13, 1994, 108 Stat. 2140, added item 3509.

1988—Pub. L. 100–690, title VI, § 6484(b), Nov. 18, 1988, 102 Stat. 4384, added item 3508.

1984—Pub. L. 98–473, title II, § 1217(b), Oct. 12, 1984, 98 Stat. 2166, added items 3505, 3506, and 3507.

1970—Pub. L. 91–452, title II, § 228(b), title VI, § 601(b), title VII, § 702(b), Oct. 15, 1970, 84 Stat. 930, 935, 936, added items 3503 and 3504, and struck out item 3486 ''Compelled testimony tending to incriminate witnesses; immunity''.

1968—Pub. L. 90–351, title II, § 701(b), June 19, 1968, 82 Stat. 211, added items 3501 and 3502.

1957—Pub. L. 85–269, Sept. 2, 1957, 71 Stat. 596, added item 3500.

1954—Act Aug. 20, 1954, ch. 769, § 2, 68 Stat. 746, rephrased item 3486.

PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

Pub. L. 91–452, title V, §§ 501–504, Oct. 15, 1970, 84 Stat. 933, which authorized the Attorney General to provide for the security of Government witnesses and the families of Government witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity, was repealed by Pub. L. 98–473, title II, § 1209(b), Oct. 12, 1984, 98 Stat. 2163, effective Oct. 1, 1984.

§ 3481. Competency of accused

In trial of all persons charged with the commission of offenses against the United States and in all proceedings in courts martial and courts of inquiry in any State, District, Possession or Territory, the person charged shall, at his own request, be a competent witness. His failure to make such request shall not create any presumption against him.

(June 25, 1948, ch. 645, 62 Stat. 833.)

HISTORICAL AND REVISION NOTES

Based on section 632 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, and section 1200, Art. 42(a), of Title 34, Navy. (Mar. 16, 1878, ch. 37, 20 Stat. 30).

Section was rewritten without change of substance.

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–6, § 1, Mar. 19, 1997, 111 Stat. 12, provided that: ''This Act [enacting section 3510 of this title, amending section 3593 of this title, and enacting provisions set out as a note under section 3510 of this title] may be cited as the 'Victim Rights Clarification Act of 1997'.''

§ 3482. Evidence and witnesses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Competency and privileges of witnesses and admissibility of evidence governed by principles of common law, Rule 26.

(June 25, 1948, ch. 645, 62 Stat. 833.)

REFERENCES IN TEXT

Rule 26 of the Federal Rules of Criminal Procedure, referred to in text, was amended in 1972. The subject matter is covered by the Federal Rules of Evidence, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3483. Indigent defendants, process to produce evidence—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Subpoena for indigent defendants, motion, affidavit, costs, Rule 17(b).

(June 25, 1948, ch. 645, 62 Stat. 833.)

§ 3484. Subpoenas—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Form, contents and issuance of subpoena, Rule 17(a).
Service in United States, Rule 17(d), (e,1).
Service in foreign country, Rule 17(d), (e,2).
Indigent defendants, Rule 17(b).
On taking depositions, Rule 17(f).
Papers and documents, Rule 17(c).
Disobedience of subpoena as contempt of court, Rule 17(g).

(June 25, 1948, ch. 645, 62 Stat. 833.)

§ 3485. Expert witnesses—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Selection and appointment of expert witnesses by court or parties; compensation, Rule 28.

(June 25, 1948, ch. 645, 62 Stat. 833.)

REFERENCES IN TEXT

Rule 28 of the Federal Rules of Criminal Procedure, referred to in text, was amended in 1972. The subject matter of this reference is covered by Federal Rules of Evidence, set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3486. Administrative subpoenas

(a) AUTHORIZATION.—(1)(A) In any investigation of—

(i)(I) a Federal health care offense; or (II) a Federal offense involving the sexual exploi-

tation or abuse of children, the Attorney General; or

(ii) an offense under section 871 or 879, or a threat against a person protected by the United States Secret Service under paragraph (5) or (6) of section 3056,[1] if the Director of the Secret Service determines that the threat constituting the offense or the threat against the person protected is imminent, the Secretary of the Treasury,

may issue in writing and cause to be served a subpoena requiring the production and testimony described in subparagraph (B).

(B) Except as provided in subparagraph (C), a subpoena issued under subparagraph (A) may require—

(i) the production of any records or other things relevant to the investigation; and

(ii) testimony by the custodian of the things required to be produced concerning the production and authenticity of those things.

(C) A subpoena issued under subparagraph (A) with respect to a provider of electronic communication service or remote computing service, in an investigation of a Federal offense involving the sexual exploitation or abuse of children shall not extend beyond—

(i) requiring that provider to disclose the information specified in section 2703(c)(2), which may be relevant to an authorized law enforcement inquiry; or

(ii) requiring a custodian of the records of that provider to give testimony concerning the production and authentication of such records or information.

(D) As used in this paragraph, the term ''Federal offense involving the sexual exploitation or abuse of children'' means an offense under section 1201, 1591, 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423, in which the victim is an individual who has not attained the age of 18 years.

(2) A subpoena under this subsection shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

(3) The production of records relating to a Federal health care offense shall not be required under this section at any place more than 500 miles distant from the place where the subpoena for the production of such records is served. The production of things in any other case may be required from any place within the United States or subject to the laws or jurisdiction of the United States.

(4) Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(5) At any time before the return date specified in the summons, the person or entity summoned may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the summons, or a prohibition of disclosure ordered by a court under paragraph (6).

(6)(A) A United State[2] district court for the district in which the summons is or will be served, upon application of the United States, may issue an ex parte order that no person or entity disclose to any other person or entity (other than to an attorney in order to obtain legal advice) the existence of such summons for a period of up to 90 days.

(B) Such order may be issued on a showing that the things being sought may be relevant to the investigation and there is reason to believe that such disclosure may result in—

(i) endangerment to the life or physical safety of any person;

(ii) flight to avoid prosecution;

(iii) destruction of or tampering with evidence; or

(iv) intimidation of potential witnesses.

(C) An order under this paragraph may be renewed for additional periods of up to 90 days upon a showing that the circumstances described in subparagraph (B) continue to exist.

(7) A summons issued under this section shall not require the production of anything that would be protected from production under the standards applicable to a subpoena duces tecum issued by a court of the United States.

(8) If no case or proceeding arises from the production of records or other things pursuant to this section within a reasonable time after those records or things are produced, the agency to which those records or things were delivered shall, upon written demand made by the person producing those records or things, return them to that person, except where the production required was only of copies rather than originals.

(9) A subpoena issued under paragraph (1)(A)(i)(II) or (1)(A)(ii) may require production as soon as possible, but in no event less than 24 hours after service of the subpoena.

(10) As soon as practicable following the issuance of a subpoena under paragraph (1)(A)(ii), the Secretary of the Treasury shall notify the Attorney General of its issuance.

(b) SERVICE.—A subpoena issued under this section may be served by any person who is at least 18 years of age and is designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) ENFORCEMENT.—In the case of contumacy by or refusal to obey a subpoena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the

[1] So in original. Probably should be section ''3056(a),''.

[2] So in original.

subpoena. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony concerning the production and authentication of such records. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

(d) IMMUNITY FROM CIVIL LIABILITY.—Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or the United States to any customer or other person for such production or for nondisclosure of that production to the customer.

(e) LIMITATION ON USE.—(1) Health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefor.

(2) In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.

(3) Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(Added Pub. L. 104–191, title II, § 248(a), Aug. 21, 1996, 110 Stat. 2018; amended Pub. L. 105–277, div. A, § 101(b) [title I, § 122], Oct. 21, 1998, 112 Stat. 2681–50, 2681–72; Pub. L. 105–314, title VI, § 606(a)(1), Oct. 30, 1998, 112 Stat. 2984; Pub. L. 106–544, § 5(a), (b)(1), (c), Dec. 19, 2000, 114 Stat. 2716, 2718; Pub. L. 108–21, title V, § 509, Apr. 30, 2003, 117 Stat. 684; Pub. L. 110–457, title II, § 224(b), Dec. 23, 2008, 122 Stat. 5072.)

PRIOR PROVISIONS

A prior section 3486, acts June 25, 1948, ch. 645, 62 Stat. 833; Aug. 20, 1954, ch. 769, § 1, 68 Stat. 745; Aug. 28, 1965, Pub. L. 89–141, § 2, 79 Stat. 581, set forth procedure for granting of immunity to witnesses compelled to testify or produce evidence in course of any Congressional investigation, or case or proceeding before any grand jury or court of the United States, involving interference with or endangering of national security or defense of the United States, prior to repeal by Pub. L. 91–452, title II, § 228(a), Oct. 15, 1970, 84 Stat. 930, effective on sixtieth day following Oct. 15, 1970. See section 6001 et seq. of this title.

AMENDMENTS

2008—Subsec. (a)(1)(D). Pub. L. 110–457 inserted ''1591,'' after ''1201,''.

2003—Subsec. (a)(1)(C)(i). Pub. L. 108–21 substituted ''the information specified in section 2703(c)(2)'' for ''the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized''.

2000—Pub. L. 106–544, § 5(b)(1), struck out ''in Federal health care investigations'' after ''subpoenas'' in section catchline.

Subsec. (a)(1). Pub. L. 106–544, § 5(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In any investigation relating to any act or activity involving a Federal health care offense, or any act or activity involving a Federal offense relating to the sexual exploitation or other abuse of children, the Attorney General or the Attorney General's designee may issue in writing and cause to be served a subpoena—

''(A) requiring the production of any records (including any books, papers, documents, electronic media, or other objects or tangible things), which may be relevant to an authorized law enforcement inquiry, that a person or legal entity may possess or have care, custody, or control; or

''(B) requiring a custodian of records to give testimony concerning the production and authentication of such records.''

Subsec. (a)(3). Pub. L. 106–544, § 5(a)(2), inserted ''relating to a Federal health care offense'' after ''production of records'' and inserted at end ''The production of things in any other case may be required from any place within the United States or subject to the laws or jurisdiction of the United States.''

Subsec. (a)(4). Pub. L. 106–544, § 5(c)(1), substituted ''subpoenaed'' for ''summoned''.

Subsec. (a)(5) to (10). Pub. L. 106–544, § 5(a)(3), added pars. (5) to (10).

Subsec. (d). Pub. L. 106–544, § 5(c)(2), substituted ''subpoena'' for ''summons'' in two places.

1998—Pub. L. 105–314 substituted ''Administrative subpoenas in Federal health care investigations'' for ''Authorized investigative demand procedures'' in section catchline.

Subsec. (a)(1). Pub. L. 105–277 inserted ''or any act or activity involving a Federal offense relating to the sexual exploitation or other abuse of children,'' after ''health care offense,'' in introductory provisions.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[§ 3486A. Repealed. Pub. L. 106–544, § 5(b)(3), Dec. 19, 2000, 114 Stat. 2718]

Section, added Pub. L. 105–314, title VI, § 606(a)(2), Oct. 30, 1998, 112 Stat. 2984, related to administrative subpoenas in cases involving child abuse and child sexual exploitation.

§ 3487. Refusal to pay as evidence of embezzlement

The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money to pay any draft, order, or warrant, drawn upon him by the Government Accountability Office, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money, promptly, upon the legal requirement of any authorized of-

ficer, shall be deemed, upon the trial of any indictment against such person for embezzlement, prima facie evidence of such embezzlement.

(June 25, 1948, ch. 645, 62 Stat. 833; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., § 180 (Mar. 4, 1909, ch. 321, § 94, 35 Stat. 1106; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

''General Accounting Office'' was substituted for ''proper accounting officer of the Treasury''.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 3488. Intoxicating liquor in Indian country as evidence of unlawful introduction

The possession by a person of intoxicating liquors in Indian country where the introduction is prohibited by treaty or Federal statute shall be prima facie evidence of unlawful introduction.

(June 25, 1948, ch. 645, 62 Stat. 834.)

HISTORICAL AND REVISION NOTES

Based on section 245 of title 25, U.S.C., 1940 ed., Indians (May 18, 1916, ch. 125, § 1, 39 Stat. 124).

The only change made was the insertion of the word ''Indian'' before ''country'', to substitute specificity for generality. (See definition of ''Indian country'' in section 1151 of this title.)

§ 3489. Discovery and inspection—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Inspection of documents and papers taken from defendant, Rule 16.

(June 25, 1948, ch. 645, 62 Stat. 834.)

§ 3490. Official record or entry—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official record or entry as in civil actions, Rule 27.

(June 25, 1948, ch. 645, 62 Stat. 834.)

§ 3491. Foreign documents

Any book, paper, statement, record, account, writing, or other document, or any portion thereof, of whatever character and in whatever form, as well as any copy thereof equally with the original, which is not in the United States shall, when duly certified as provided in section 3494 of this title, be admissible in evidence in any criminal action or proceeding in any court of the United States if the court shall find, from all the testimony taken with respect to such foreign document pursuant to a commission executed under section 3492 of this title, that such document (or the original thereof in case such document is a copy) satisfies the authentication requirements of the Federal Rules of Evidence, unless in the event that the genuineness of such document is denied, any party to such criminal action or proceeding making such denial shall establish to the satisfaction of the court that such document is not genuine. Nothing contained herein shall be deemed to require authentication under the provisions of section 3494 of this title of any such foreign documents which may otherwise be properly authenticated by law.

(June 25, 1948, ch. 645, 62 Stat. 834; May 24, 1949, ch. 139, § 52, 63 Stat. 96; Pub. L. 88–619, § 2, Oct. 3, 1964, 78 Stat. 995; Pub. L. 94–149, § 3, Dec. 12, 1975, 89 Stat. 806.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 695a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 2, 49 Stat. 1562.)

1949 ACT

This section [section 52] corrects section 3491 of title 18, U.S.C., so that the references therein will be to the correct section numbers in title 28, U.S.C., as revised and enacted in 1948.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1975—Pub. L. 94–149 substituted ''the authentication requirements of the Federal Rules of Evidence'' for ''the requirements of section 1732 of Title 28''.

1964—Pub. L. 88–619 struck out ''and section 1741 of Title 28'' after ''section 3494 of this title'' in two places.

1949—Act May 24, 1949, substituted ''section 1741'' for ''section 695e'' and ''section 1732'' for ''section 695'' wherever appearing.

§ 3492. Commission to consular officers to authenticate foreign documents

(a) The testimony of any witness in a foreign country may be taken either on oral or written interrogatories, or on interrogatories partly oral and partly written, pursuant to a commission issued, as hereinafter provided, for the purpose of determining whether any foreign documents sought to be used in any criminal action or proceeding in any court of the United States are genuine, and whether the authentication requirements of the Federal Rules of Evidence are satisfied with respect to any such document (or the original thereof in case such document is a copy). Application for the issuance of a commission for such purpose may be made to the court in which such action or proceeding is pending by the United States or any other party thereto, after five days' notice in writing by the applicant party, or his attorney, to the opposite party, or his attorney of record, which notice shall state the names and addresses of witnesses whose testimony is to be taken and the time when it is desired to take such testimony. In granting such application the court shall issue a commission for the purpose of taking the testimony sought by the applicant addressed to any consular officer of the United States conveniently located for the purpose. In cases of testimony taken on oral or partly oral interrogatories, the court shall make provisions in the commission for the selection as hereinafter provided of foreign counsel to represent each party (except the United States) to the criminal action or proceeding in which the foreign documents in question are to be used, unless such party has, prior to the issuance of the commission, notified the court that he does not desire

the selection of foreign counsel to represent him at the time of taking of such testimony. In cases of testimony taken on written interrogatories, such provision shall be made only upon the request of any such party prior to the issuance of such commission. Selection of foreign counsel shall be made by the party whom such foreign counsel is to represent within ten days prior to the taking of testimony or by the court from which the commission issued, upon the request of such party made within such time.

(b) Any consular officer to whom a commission is addressed to take testimony, who is interested in the outcome of the criminal action or proceeding in which the foreign documents in question are to be used or has participated in the prosecution of such action or proceeding, whether by investigations, preparation of evidence, or otherwise, may be disqualified on his own motion or on that of the United States or any other party to such criminal action or proceeding made to the court from which the commission issued at any time prior to the execution thereof. If after notice and hearing, the court grants the motion, it shall instruct the consular officer thus disqualified to send the commission to any other consular officer of the United States named by the court, and such other officer shall execute the commission according to its terms and shall for all purposes be deemed the officer to whom the commission is addressed.

(c) The provisions of this section and sections 3493–3496 of this title applicable to consular officers shall be applicable to diplomatic officers pursuant to such regulations as may be prescribed by the President. For purposes of this section and sections 3493 through 3496 of this title, the term ''consular officers'' includes any United States citizen who is designated to perform notarial functions pursuant to section 1750 of the Revised Statutes, as amended (22 U.S.C. 4221).

(June 25, 1948, ch. 645, 62 Stat. 834; May 24, 1949, ch. 139, § 53, 63 Stat. 96; Pub. L. 94–149, § 4, Dec. 12, 1975, 89 Stat. 806; Pub. L. 105–277, div. G, subdiv. B, title XXII, § 2222(c)(2), Oct. 21, 1998, 112 Stat. 2681–818.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 695b of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 3, 49 Stat. 1562).

1949 ACT

This section [section 53] corrects section 3492(a) of title 18, U.S.C., so that the reference in the first sentence thereof will be to the correct section number in title 28, U.S.C., as revised and enacted in 1948.

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (a), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–277 inserted at end ''For purposes of this section and sections 3493 through 3496 of this title, the term 'consular officers' includes any United States citizen who is designated to perform notarial functions pursuant to section 1750 of the Revised Statutes, as amended (22 U.S.C. 4221).''

1975—Subsec. (a). Pub. L. 94–149 substituted ''the authentication requirements of the Federal Rules of Evidence'' for ''the requirements of section 1732 of Title 28''.

1949—Subsec. (a). Act May 24, 1949, substituted ''section 1732'' for ''section 695''.

§ 3493. Deposition to authenticate foreign documents

The consular officer to whom any commission authorized under section 3492 of this title is addressed shall take testimony in accordance with its terms. Every person whose testimony is taken shall be cautioned and sworn to testify the whole truth and carefully examined. His testimony shall be reduced to writing or typewriting by the consular officer taking the testimony, or by some person under his personal supervision, or by the witness himself, in the presence of the consular officer and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the witness. Every foreign document, with respect to which testimony is taken, shall be annexed to such testimony and subscribed by each witness who appears for the purpose of establishing the genuineness of such document. When counsel for all the parties attend the examination of any witness whose testimony is to be taken on written interrogatories, they may consent that oral interrogatories in addition to those accompanying the commission may be put to the witness. The consular officer taking any testimony shall require an interpreter to be present when his services are needed or are requested by any party or his attorney.

(June 25, 1948, ch. 645, 62 Stat. 835.)

HISTORICAL AND REVISION NOTES

Based on section 695c of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 4, 49 Stat. 1563).

§ 3494. Certification of genuineness of foreign document

If the consular officer executing any commission authorized under section 3492 of this title shall be satisfied, upon all the testimony taken, that a foreign document is genuine, he shall certify such document to be genuine under the seal of his office. Such certification shall include a statement that he is not subject to disqualification under the provisions of section 3492 of this title. He shall thereupon transmit, by mail, such foreign documents, together with the record of all testimony taken and the commission which has been executed, to the clerk of the court from which such commission issued, in the manner in which his official dispatches are transmitted to the Government. The clerk receiving any executed commission shall open it and shall make any foreign documents and record of testimony, transmitted with such commission, available for inspection by the parties to the criminal action or proceeding in which such documents are to be used, and said parties shall be furnished copies of such documents free of charge.

(June 25, 1948, ch. 645, 62 Stat. 835.)

HISTORICAL AND REVISION NOTES

Based on section 695d of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 5, 49 Stat. 1563).

§ 3495. Fees and expenses of consuls, counsel, interpreters and witnesses

(a) The consular fees prescribed under section 1201 of Title 22, for official services in connection with the taking of testimony under sections 3492–3494 of this title, and the fees of any witness whose testimony is taken shall be paid by the party who applied for the commission pursuant to which such testimony was taken. Every witness under section 3493 of this title shall be entitled to receive, for each day's attendance, fees prescribed under section 3496 of this title. Every foreign counsel selected pursuant to a commission issued on application of the United States, and every interpreter whose services are required by a consular officer under section 3493 of this title, shall be paid by the United States, such compensation, together with such personal and incidental expense upon verified statements filed with the consular officer, as he may allow. Compensation and expenses of foreign counsel selected pursuant to a commission issued on application of any party other than the United States shall be paid by the party whom such counsel represents and shall be allowed in the same manner.

(b) Whenever any party makes affidavit, prior to the issuance of a commission for the purpose of taking testimony, that he is not possessed of sufficient means and is actually unable to pay any fees and costs incurred under this section, such fees and costs shall, upon order of the court, be paid in the same manner as fees and costs are paid which are chargeable to the United States.

(c) Any appropriation available for the payment of fees and costs in the case of witnesses subpenaed in behalf of the United States in criminal cases shall be available for any fees or costs which the United States is required to pay under this section.

(June 25, 1948, ch. 645, 62 Stat. 836; May 24, 1949, ch. 139, § 54, 63 Stat. 96.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on section 695f of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 7, 49 Stat. 1564).

1949 ACT

This section [section 54] corrects the reference in the first sentence of section 3495(a) of title 18, U.S.C., because the provisions which were formerly set out as section 127 of title 22, U.S.C., are now set out as section 1201 of such title.

REFERENCES IN TEXT

Section 1201 of Title 22, referred to in subsec. (a), was transferred to section 4219 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1949—Subsec. (a). Act May 24, 1949, substituted ''section 1201'' for ''section 127''.

§ 3496. Regulations by President as to commissions, fees of witnesses, counsel and interpreters

The President is authorized to prescribe regulations governing the manner of executing and returning commissions by consular officers under the provisions of sections 3492–3494 of this title and schedules of fees allowable to witnesses, foreign counsel, and interpreters under section 3495 of this title.

(June 25, 1948, ch. 645, 62 Stat. 836.)

HISTORICAL AND REVISION NOTES

Based on section 695g of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (June 20, 1936, ch. 640, § 8, 49 Stat. 1564).

EX. ORD. NO. 10307. DELEGATION OF AUTHORITY

Ex. Ord. No. 10307, Nov. 23, 1951, 16 F.R. 11907, provided:

By virtue of the authority vested in me by the act of August 8, 1950, 64 Stat. 419 (3 U.S.C. Supp. 301–303), I hereby delegate to the Secretary of State (1) the authority vested in the President by section 3496 of title 18 of the United States Code (62 Stat. 836) to prescribe regulations governing the manner of executing and returning commissions by consular officers under the provisions of sections 3492–3494 of the said title, and schedules of fees allowable to witnesses, foreign counsel, and interpreters under section 3495 of the said title, and (2) the authority vested in the President by section 3492(c) of title 18 of the United States Code (62 Stat. 835) to prescribe regulations making the provisions of sections 3492–3496 of the said title applicable to diplomatic officers.

Executive Order No. 8298 of December 4, 1939, entitled ''Regulations Governing the Manner of Executing and Returning Commissions by Officers of the Foreign Service in Criminal Cases, and Schedule of Fees and Compensation in Such Cases'', is hereby revoked.

§ 3497. Account as evidence of embezzlement

Upon the trial of any indictment against any person for embezzling public money it shall be sufficient evidence, prima facie, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Government Accountability Office.

(June 25, 1948, ch. 645, 62 Stat. 836; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 179, 355; section 668 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (R.S. § 887; Mar. 4, 1909, ch. 321, §§ 93, 225, 35 Stat. 1105, 1133; June 10, 1921, ch. 18, § 304, 42 Stat. 24).

This section is a consolidation of section 179 of title 18, U.S.C., 1940 ed., with similar provisions of section 355 of title 18, U.S.C., 1940 ed., and section 668 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, with changes of phraseology only except that ''General Accounting Office'' was substituted for ''Treasury Department''.

Other provisions of said section 355 of title 18, U.S.C., 1940 ed., are incorporated in section 1711 of this title.

Words in second sentence of said section 355 of title 18, U.S.C., 1940 ed., which preceded the semicolon therein and which read ''Any failure to produce or to pay over any such money or property, when required so to do as above provided, shall be taken to be prima facie evidence of such embezzlement'' were omitted as surplusage, because such failure to produce or to pay over such money or property constitutes embezzlement. (See sections 653 and 1711 of this title.)

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 3498. Depositions—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Time, manner and conditions of taking depositions; costs; notice; use; objections; written interrogatories, Rule 15.

Subpoenas on taking depositions, Rule 17(f).

(June 25, 1948, ch. 645, 62 Stat. 836.)

§ 3499. Contempt of court by witness—(Rule)

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Disobedience of subpoena without excuse as contempt, Rule 17(g).

(June 25, 1948, ch. 645, 62 Stat. 836.)

§ 3500. Demands for production of statements and reports of witnesses

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

(d) If the United States elects not to comply with an order of the court under subsection (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) The term ''statement'', as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

(1) a written statement made by said witness and signed or otherwise adopted or approved by him;

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or

(3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.

(Added Pub. L. 85–269, Sept. 2, 1957, 71 Stat. 595; amended Pub. L. 91–452, title I, § 102, Oct. 15, 1970, 84 Stat. 926.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–452, § 102(a), struck out ''to an agent of the Government'' after ''(other than the defendant)''.

Subsec. (d). Pub. L. 91–452, § 102(b), substituted ''subsection'' for ''paragraph''.

Subsec. (e). Pub. L. 91–452, § 102(c), (d), struck out ''or'' after ''by him;'' in par. (1), struck out ''to an agent of the Government'' after ''said witness'' in par. (2), and added par. (3).

§ 3501. Admissibility of confessions

(a) In any criminal prosecution brought by the United States or by the District of Columbia, a confession, as defined in subsection (e) hereof, shall be admissible in evidence if it is voluntarily given. Before such confession is received in evidence, the trial judge shall, out of the presence of the jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the circumstances.

(b) The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including (1) the time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest and before arraignment, (2) whether such defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession, (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel; and (5)

whether or not such defendant was without the assistance of counsel when questioned and when giving such confession.

The presence or absence of any of the above-mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.

(c) In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: *Provided*, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such magistrate judge or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer.

(d) Nothing contained in this section shall bar the admission in evidence of any confession made or given voluntarily by any person to any other person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention.

(e) As used in this section, the term ''confession'' means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

(Added Pub. L. 90–351, title II, § 701(a), June 19, 1968, 82 Stat. 210; amended Pub. L. 90–578, title III, § 301(a)(3), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

AMENDMENTS

1968—Subsec. (c). Pub. L. 90–578 substituted ''magistrate'' for ''commissioner'' wherever appearing.

CHANGE OF NAME

Words ''magistrate judge'' substituted for ''magistrate'' wherever appearing in subsec. (c) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

§ 3502. Admissibility in evidence of eye witness testimony

The testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is being tried shall be admissible in evidence in a criminal prosecution in any trial court ordained and established under article III of the Constitution of the United States.

(Added Pub. L. 90–351, title II, § 701(a), June 19, 1968, 82 Stat. 211.)

[§ 3503. Repealed. Pub. L. 107–273, div. B, title IV, § 4002(c)(3)(A), Nov. 2, 2002, 116 Stat. 1809]

Section, added Pub. L. 91–452, title VI, § 601(a), Oct. 15, 1970, 84 Stat. 934, related to depositions to preserve testimony.

§ 3504. Litigation concerning sources of evidence

(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States—

(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of an unlawful act, the opponent of the claim shall affirm or deny the occurrence of the alleged unlawful act;

(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1968, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, shall not be required unless such information may be relevant to a pending claim of such inadmissibility; and

(3) no claim shall be considered that evidence of an event is inadmissible on the ground that such evidence was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, if such event occurred more than five years after such allegedly unlawful act.

(b) As used in this section ''unlawful act'' means any act the use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title) in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto.

(Added Pub. L. 91–452, title VII, § 702(a), Oct. 15, 1970, 84 Stat. 935.)

CONGRESSIONAL STATEMENT OF FINDINGS

Section 701 of title VII of Pub. L. 91–452 provided that: ''The Congress finds that claims that evidence offered in proceedings was obtained by the exploitation of unlawful acts, and is therefore inadmissible in evidence, (1) often cannot reliably be determined when such claims concern evidence of events occurring years after the allegedly unlawful act, and (2) when the allegedly unlawful act has occurred more than five years prior to the event in question, there is virtually no likelihood that the evidence offered to prove the event has been obtained by the exploitation of that allegedly unlawful act.''

APPLICABILITY TO PROCEEDINGS

Section 703 of title VII of Pub. L. 91–452 provided that: ''This title [enacting this section and provisions set as notes under this section] shall apply to all proceedings, regardless of when commenced, occurring after the date of its enactment [Oct. 15, 1970]. Paragraph (3) of subsection (a) of section 3504, chapter 223, title 18, United States Code, shall not apply to any proceeding in which all information to be relied upon to establish inadmissibility was possessed by the party making such claim and adduced in such proceeding prior to such enactment.''

§ 3505. Foreign records of regularly conducted activity

(a)(1) In a criminal proceeding in a court of the United States, a foreign record of regularly

conducted activity, or a copy of such record, shall not be excluded as evidence by the hearsay rule if a foreign certification attests that—

(A) such record was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) such record was kept in the course of a regularly conducted business activity;

(C) the business activity made such a record as a regular practice; and

(D) if such record is not the original, such record is a duplicate of the original;

unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

(2) A foreign certification under this section shall authenticate such record or duplicate.

(b) At the arraignment or as soon after the arraignment as practicable, a party intending to offer in evidence under this section a foreign record of regularly conducted activity shall provide written notice of that intention to each other party. A motion opposing admission in evidence of such record shall be made by the opposing party and determined by the court before trial. Failure by a party to file such motion before trial shall constitute a waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

(c) As used in this section, the term—

(1) ''foreign record of regularly conducted activity'' means a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, maintained in a foreign country;

(2) ''foreign certification'' means a written declaration made and signed in a foreign country by the custodian of a foreign record of regularly conducted activity or another qualified person that, if falsely made, would subject the maker to criminal penalty under the laws of that country; and

(3) ''business'' includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(Added Pub. L. 98–473, title II, § 1217(a), Oct. 12, 1984, 98 Stat. 2165.)

EFFECTIVE DATE

Section 1220 of part K (§§ 1217–1220) of chapter XII of title II of Pub. L. 98–473 provided that: ''This part and the amendments made by this part [enacting this section and sections 3292, 3506, and 3507 of this title and amending section 3161 of this title] shall take effect thirty days after the date of the enactment of this Act [Oct. 12, 1984].''

§ 3506. Service of papers filed in opposition to official request by United States to foreign government for criminal evidence

(a) Except as provided in subsection (b) of this section, any national or resident of the United States who submits, or causes to be submitted, a pleading or other document to a court or other authority in a foreign country in opposition to an official request for evidence of an offense shall serve such pleading or other document on the Attorney General at the time such pleading or other document is submitted.

(b) Any person who is a party to a criminal proceeding in a court of the United States who submits, or causes to be submitted, a pleading or other document to a court or other authority in a foreign country in opposition to an official request for evidence of an offense that is a subject of such proceeding shall serve such pleading or other document on the appropriate attorney for the Government, pursuant to the Federal Rules of Criminal Procedure, at the time such pleading or other document is submitted.

(c) As used in this section, the term ''official request'' means a letter rogatory, a request under a treaty or convention, or any other request for evidence made by a court of the United States or an authority of the United States having criminal law enforcement responsibility, to a court or other authority of a foreign country.

(Added Pub. L. 98–473, title II, § 1217(a), Oct. 12, 1984, 98 Stat. 2166.)

EFFECTIVE DATE

Section effective 30 days after Oct. 12, 1984, see section 1220 of Pub. L. 98–473, set out as a note under section 3505 of this title.

§ 3507. Special master at foreign deposition

Upon application of a party to a criminal case, a United States district court before which the case is pending may, to the extent permitted by a foreign country, appoint a special master to carry out at a deposition taken in that country such duties as the court may direct, including presiding at the deposition or serving as an advisor on questions of United States law. Notwithstanding any other provision of law, a special master appointed under this section shall not decide questions of privilege under foreign law. The refusal of a court to appoint a special master under this section, or of the foreign country to permit a special master appointed under this section to carry out a duty at a deposition in that country, shall not affect the admissibility in evidence of a deposition taken under the provisions of the Federal Rules of Criminal Procedure.

(Added Pub. L. 98–473, title II, § 1217(a), Oct. 12, 1984, 98 Stat. 2166.)

EFFECTIVE DATE

Section effective 30 days after Oct. 12, 1984, see section 1220 of Pub. L. 98–473, set out as a note under section 3505 of this title.

§ 3508. Custody and return of foreign witnesses

(a) When the testimony of a person who is serving a sentence, is in pretrial detention, or is otherwise being held in custody, in a foreign country, is needed in a State or Federal criminal proceeding, the Attorney General shall, when he deems it appropriate in the exercise of his discretion, have the authority to request the temporary transfer of that person to the United States for the purposes of giving such testimony, to transport such person to the United States in custody, to maintain the custody of such person while he is in the United States, and to return such person to the foreign country.

(b) Where the transfer to the United States of a person in custody for the purposes of giving

testimony is provided for by treaty or convention, by this section, or both, that person shall be returned to the foreign country from which he is transferred. In no event shall the return of such person require any request for extradition or extradition proceedings, or proceedings under the immigration laws.

(c) Where there is a treaty or convention between the United States and the foreign country in which the witness is being held in custody which provides for the transfer, custody and return of such witnesses, the terms and conditions of that treaty shall apply. Where there is no such treaty or convention, the Attorney General may exercise the authority described in paragraph (a) if both the foreign country and the witness give their consent.

(Added Pub. L. 100–690, title VI, § 6484(a), Nov. 18, 1988, 102 Stat. 4384.)

§ 3509. Child victims' and child witnesses' rights

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''adult attendant'' means an adult described in subsection (i) who accompanies a child throughout the judicial process for the purpose of providing emotional support;

(2) the term ''child'' means a person who is under the age of 18, who is or is alleged to be—

(A) a victim of a crime of physical abuse, sexual abuse, or exploitation; or

(B) a witness to a crime committed against another person;

(3) the term ''child abuse'' means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(4) the term ''physical injury'' includes lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(5) the term ''mental injury'' means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

(6) the term ''exploitation'' means child pornography or child prostitution;

(7) the term ''multidisciplinary child abuse team'' means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse;

(8) the term ''sexual abuse'' includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(9) the term ''sexually explicit conduct'' means actual or simulated—

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals or pubic area of a person or animal; or

(E) sadistic or masochistic abuse;

(10) the term ''sex crime'' means an act of sexual abuse that is a criminal act;

(11) the term ''negligent treatment'' means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(12) the term ''child abuse'' does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(b) ALTERNATIVES TO LIVE IN-COURT TESTIMONY.—

(1) CHILD'S LIVE TESTIMONY BY 2-WAY CLOSED CIRCUIT TELEVISION.—

(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, or a guardian ad litem appointed under subsection (h) may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed circuit television. The person seeking such an order shall apply for such an order at least 7 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(B) The court may order that the testimony of the child be taken by closed-circuit television as provided in subparagraph (A) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

(i) The child is unable to testify because of fear.

(ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.

(iii) The child suffers a mental or other infirmity.

(iv) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(C) The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child of one or more of the factors described in subparagraph (B) is so substantial as to justify an order under subparagraph (A), the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

(D) If the court orders the taking of testimony by television, the attorney for the Government and the attorney for the defendant not including an attorney pro se for a party shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are—

(i) the child's attorney or guardian ad litem appointed under subsection (h);

(ii) persons necessary to operate the closed-circuit television equipment;

(iii) a judicial officer, appointed by the court; and

(iv) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

(2) VIDEOTAPED DEPOSITION OF CHILD.—(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under subsection (h) may apply for an order that a deposition be taken of the child's testimony and that the deposition be recorded and preserved on videotape.

(B)(i) Upon timely receipt of an application described in subparagraph (A), the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

(I) The child will be unable to testify because of fear.

(II) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

(III) The child suffers a mental or other infirmity.

(IV) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(ii) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the court shall order that the child's deposition be taken and preserved by videotape.

(iii) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are—

(I) the attorney for the Government;

(II) the attorney for the defendant;

(III) the child's attorney or guardian ad litem appointed under subsection (h);

(IV) persons necessary to operate the videotape equipment;

(V) subject to clause (iv), the defendant; and

(VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

(iv) If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

(v) HANDLING OF VIDEOTAPE.—The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(C) If at the time of trial the court finds that the child is unable to testify as for a reason described in subparagraph (B)(i), the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

(D) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(E) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

(F) The videotape of a deposition taken under this paragraph shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

(c) COMPETENCY EXAMINATIONS.—

(1) EFFECT OF FEDERAL RULES OF EVIDENCE.—Nothing in this subsection shall be construed to abrogate rule 601 of the Federal Rules of Evidence.

(2) PRESUMPTION.—A child is presumed to be competent.

(3) REQUIREMENT OF WRITTEN MOTION.—A competency examination regarding a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.

(4) REQUIREMENT OF COMPELLING REASONS.—A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason.

(5) PERSONS PERMITTED TO BE PRESENT.—The only persons who may be permitted to be present at a competency examination are—

(A) the judge;

(B) the attorney for the Government;

(C) the attorney for the defendant;

(D) a court reporter; and

(E) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

(6) NOT BEFORE JURY.—A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.

(7) DIRECT EXAMINATION OF CHILD.—Examination of a child related to competency shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant including a party acting as an attorney pro se. The court may permit an attorney but not a party acting as an attorney pro se to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

(8) APPROPRIATE QUESTIONS.—The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

(9) PSYCHOLOGICAL AND PSYCHIATRIC EXAMINATIONS.—Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

(d) PRIVACY PROTECTION.—

(1) CONFIDENTIALITY OF INFORMATION.—(A) A person acting in a capacity described in subparagraph (B) in connection with a criminal proceeding shall—

(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does not have reason to know their contents has access; and

(ii) disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

(B) Subparagraph (A) applies to—

(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the Government to provide assistance in the proceeding;

(ii) employees of the court;

(iii) the defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

(iv) members of the jury.

(2) FILING UNDER SEAL.—All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court—

(A) the complete paper to be kept under seal; and

(B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

(3) PROTECTIVE ORDERS.—(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may—

(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

(ii) provide for any other measures that may be necessary to protect the privacy of the child.

(4) DISCLOSURE OF INFORMATION.—This subsection does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

(e) CLOSING THE COURTROOM.—When a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to effectively communicate. Such an order shall be narrowly tailored to serve the Government's specific compelling interest.

(f) VICTIM IMPACT STATEMENT.—In preparing the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. A guardian ad litem appointed under subsection (h) shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. A guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

(g) USE OF MULTIDISCIPLINARY CHILD ABUSE TEAMS.—

(1) IN GENERAL.—A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the Government shall consult with the multidisciplinary child abuse team as appropriate.

(2) ROLE OF MULTIDISCIPLINARY CHILD ABUSE TEAMS.—The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including—

(A) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

(B) telephone consultation services in emergencies and in other situations;

(C) medical evaluations related to abuse or neglect;

(D) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;

(E) expert medical, psychological, and related professional testimony;

(F) case service coordination and assistance, including the location of services available from public and private agencies in the community; and

(G) training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

(h) GUARDIAN AD LITEM.—

(1) IN GENERAL.—The court may appoint, and provide reasonable compensation and payment of expenses for, a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the court shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

(2) DUTIES OF GUARDIAN AD LITEM.—A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. (The extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives.) A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

(3) IMMUNITIES.—A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties described in paragraph (2).

(i) ADULT ATTENDANT.—A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

(j) SPEEDY TRIAL.—In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

(k) STAY OF CIVIL ACTION.—If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the civil action dur-

ing the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

(*l*) TESTIMONIAL AIDS.—The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

(m) PROHIBITION ON REPRODUCTION OF CHILD PORNOGRAPHY.—

(1) In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title) shall remain in the care, custody, and control of either the Government or the court.

(2)(A) Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title), so long as the Government makes the property or material reasonably available to the defendant.

(B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.

(Added Pub. L. 101–647, title II, §225(a), Nov. 29, 1990, 104 Stat. 4798; amended Pub. L. 103–322, title XXXIII, §§330010(6), (7), 330011(e), 330018(b), Sept. 13, 1994, 108 Stat. 2143, 2145, 2149; Pub. L. 104–294, title VI, §605(h), Oct. 11, 1996, 110 Stat. 3510; Pub. L. 109–248, title V, §§504, 507, July 27, 2006, 120 Stat. 629, 631; Pub. L. 111–16, §3(11), May 7, 2009, 123 Stat. 1608.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in subsecs. (f) and (m)(2)(A), are set out in the Appendix to this title.

AMENDMENTS

2009—Subsec. (b)(1)(A). Pub. L. 111–16 substituted ''7 days'' for ''5 days''.

2006—Subsec. (h)(1). Pub. L. 109–248, §507, inserted '', and provide reasonable compensation and payment of expenses for,'' after ''The court may appoint''.

Subsec. (m). Pub. L. 109–248, §504, added subsec. (m).

1996—Subsec. (e). Pub. L. 104–294, §605(h)(1), substituted ''serve the Government's'' for ''serve the government's''.

Subsec. (h)(3). Pub. L. 104–294, §605(h)(2), substituted ''in paragraph (2)'' for ''in subpart (2)''.

1994—Pub. L. 103–322, §330011(e), made technical amendment to directory language of Pub. L. 101–647, §225(a), which enacted this section.

Pub. L. 103–322, §330010(7)(B), substituted ''Government'' for ''government'' in subsecs. (b)(1)(A), (D), (2)(A), and (c)(5)(B), in subsec. (d)(1)(B)(i) after ''hired by the'', and in subsec. (g)(1).

Pub. L. 103–322, §330010(7)(A), substituted ''subsection'' for ''subdivision'' in subsecs. (b)(1)(A), (D)(i), (2)(A), (B)(iii)(III), (c)(1), (d)(4), and (f).

Subsec. (a)(11) to (13). Pub. L. 103–322, §330010(6), redesignated pars. (12) and (13) as (11) and (12), respectively, and struck out former par. (11) which read as follows: ''the term 'exploitation' means child pornography or child prostitution;''.

Subsec. (k). Pub. L. 103–322, §330018(b), substituted heading for one which read ''Extension of Child Statute of Limitations'' and struck out first sentence which read as follows: ''No statute of limitation that would otherwise preclude prosecution for an offense involving the sexual or physical abuse of a child under the age of 18 years shall preclude such prosecution before the child reaches the age of 25 years.''

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–16 effective Dec. 1, 2009, see section 7 of Pub. L. 111–16, set out as a note under section 109 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(e) of Pub. L. 103–322 provided that the amendment made by that section is effective as of the date on which section 225(a) of Pub. L. 101–647 took effect.

§ 3510. Rights of victims to attend and observe trial

(a) NON-CAPITAL CASES.—Notwithstanding any statute, rule, or other provision of law, a United States district court shall not order any victim of an offense excluded from the trial of a defendant accused of that offense because such victim may, during the sentencing hearing, make a statement or present any information in relation to the sentence.

(b) CAPITAL CASES.—Notwithstanding any statute, rule, or other provision of law, a United States district court shall not order any victim of an offense excluded from the trial of a defendant accused of that offense because such victim may, during the sentencing hearing, testify as to the effect of the offense on the victim and the victim's family or as to any other factor for which notice is required under section 3593(a).

(c) DEFINITION.—As used in this section, the term ''victim'' includes all persons defined as victims in section 503(e)(2) of the Victims' Rights and Restitution Act of 1990.

(Added Pub. L. 105–6, §2(a), Mar. 19, 1997, 111 Stat. 12.)

REFERENCES IN TEXT

Section 503(e)(2) of the Victims' Rights and Restitution Act of 1990, referred to in subsec. (c), is classified to section 10607(e)(2) of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section 2(d) of Pub. L. 105–6 provided that: ''The amendments made by this section [enacting this section and amending section 3593 of this title] shall apply in cases pending on the date of the enactment of this Act [Mar. 19, 1997].''

§ 3511. Judicial review of requests for information

(a) The recipient of a request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947 may, in the United States district court for the

district in which that person or entity does business or resides, petition for an order modifying or setting aside the request. The court may modify or set aside the request if compliance would be unreasonable, oppressive, or otherwise unlawful.

(b)(1) The recipient of a request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, may petition any court described in subsection (a) for an order modifying or setting aside a nondisclosure requirement imposed in connection with such a request.

(2) If the petition is filed within one year of the request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. If, at the time of the petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, or in the case of a request by a department, agency, or instrumentality of the Federal Government other than the Department of Justice, the head or deputy head of such department, agency, or instrumentality, certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive unless the court finds that the certification was made in bad faith.

(3) If the petition is filed one year or more after the request for records, a report, or other information under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, or in the case of a request by a department, agency, or instrumentality of the Federal Government other than the Federal Bureau of Investigation, the head or deputy head of such department, agency, or instrumentality, within ninety days of the filing of the petition, shall either terminate the nondisclosure requirement or re-certify that disclosure may result in a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person. In the event of re-certification, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. If the recertification that disclosure may endanger the national security of the United States or interfere with diplomatic relations is made by the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation, such certification shall be treated as conclusive unless the court finds that the recertification was made in bad faith. If the court denies a petition for an order modifying or setting aside a nondisclosure requirement under this paragraph, the recipient shall be precluded for a period of one year from filing another petition to modify or set aside such nondisclosure requirement.

(c) In the case of a failure to comply with a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the Attorney General may invoke the aid of any district court of the United States within the jurisdiction in which the investigation is carried on or the person or entity resides, carries on business, or may be found, to compel compliance with the request. The court may issue an order requiring the person or entity to comply with the request. Any failure to obey the order of the court may be punished by the court as contempt thereof. Any process under this section may be served in any judicial district in which the person or entity may be found.

(d) In all proceedings under this section, subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent an unauthorized disclosure of a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947. Petitions, filings, records, orders, and subpoenas must also be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947.

(e) In all proceedings under this section, the court shall, upon request of the government, review ex parte and in camera any government submission or portions thereof, which may include classified information.

(Added Pub. L. 109–177, title I, §115(2), Mar. 9, 2006, 120 Stat. 211.)

REFERENCES IN TEXT

Sections 626(a), (b) and 627(a) of the Fair Credit Reporting Act, referred to in subsecs. (a) to (d), are classified to sections 1681u(a), (b) and 1681v(a), respectively, of Title 15, Commerce and Trade.

Section 1114(a)(5)(A) of the Right to Financial Privacy Act, referred to in subsecs. (a) to (d), probably means section 1114(a)(5)(A) of the Right to Financial Privacy Act of 1978, which is classified to section 3414(a)(5)(A) of Title 12, Banks and Banking.

Section 802(a) of the National Security Act of 1947, referred to in subsecs. (a) to (d), is classified to section 436(a) of Title 50, War and National Defense.

REPORTS ON NATIONAL SECURITY LETTERS

Pub. L. 109–177, title I, §118, Mar. 9, 2006, 120 Stat. 217, provided that:

''(a) EXISTING REPORTS.—Any report made to a committee of Congress regarding national security letters under section 2709(c)(1) of title 18, United States Code, section 626(d) or 627(c) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d) or 1681v(c)), section 1114(a)(3) or 1114(a)(5)(D) of the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3414(a)(3) or 3414(a)(5)(D)), or section 802(b) of the National Security Act of 1947 (50 U.S.C. 436(b)) shall also be made to the Committees on the Judiciary of the House of Representatives and the Senate.

''(b) ENHANCED OVERSIGHT OF FAIR CREDIT REPORTING ACT COUNTERTERRORISM NATIONAL SECURITY LETTER.—[Amended section 1681v of Title 15, Commerce and Trade.]

''(c) REPORT ON REQUESTS FOR NATIONAL SECURITY LETTERS.—

''(1) IN GENERAL.—In April of each year, the Attorney General shall submit to Congress an aggregate report setting forth with respect to the preceding year the total number of requests made by the Department of Justice for information concerning different United States persons under—

''(A) section 2709 of title 18, United States Code (to access certain communication service provider records), excluding the number of requests for subscriber information;

''(B) section 1114 of the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3414) (to obtain financial institution customer records);

''(C) section 802 of the National Security Act of 1947 (50 U.S.C. 436) (to obtain financial information, records, and consumer reports);

''(D) section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) (to obtain certain financial information and consumer reports); and

''(E) section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) (to obtain credit agency consumer records for counterterrorism investigations).

''(2) UNCLASSIFIED FORM.—The report under this section shall be submitted in unclassified form.

''(d) NATIONAL SECURITY LETTER DEFINED.—In this section, the term 'national security letter' means a request for information under one of the following provisions of law:

''(1) Section 2709(a) of title 18, United States Code (to access certain communication service provider records).

''(2) Section 1114(a)(5)(A) of the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3414(a)(5)(A)) (to obtain financial institution customer records).

''(3) Section 802 of the National Security Act of 1947 (50 U.S.C. 436) (to obtain financial information, records, and consumer reports).

''(4) Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) (to obtain certain financial information and consumer reports).

''(5) Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) (to obtain credit agency consumer records for counterterrorism investigations).''

§ 3512. Foreign requests for assistance in criminal investigations and prosecutions

(a) EXECUTION OF REQUEST FOR ASSISTANCE.—

(1) IN GENERAL.—Upon application, duly authorized by an appropriate official of the Department of Justice, of an attorney for the Government, a Federal judge may issue such orders as may be necessary to execute a request from a foreign authority for assistance in the investigation or prosecution of criminal offenses, or in proceedings related to the prosecution of criminal offenses, including proceedings regarding forfeiture, sentencing, and restitution.

(2) SCOPE OF ORDERS.—Any order issued by a Federal judge pursuant to paragraph (1) may include the issuance of—

(A) a search warrant, as provided under Rule 41 of the Federal Rules of Criminal Procedure;

(B) a warrant or order for contents of stored wire or electronic communications or for records related thereto, as provided under section 2703 of this title;

(C) an order for a pen register or trap and trace device as provided under section 3123 of this title; or

(D) an order requiring the appearance of a person for the purpose of providing testimony or a statement, or requiring the production of documents or other things, or both.

(b) APPOINTMENT OF PERSONS TO TAKE TESTIMONY OR STATEMENTS.—

(1) IN GENERAL.—In response to an application for execution of a request from a foreign authority as described under subsection (a), a Federal judge may also issue an order appointing a person to direct the taking of testimony or statements or of the production of documents or other things, or both.

(2) AUTHORITY OF APPOINTED PERSON.—Any person appointed under an order issued pursuant to paragraph (1) may—

(A) issue orders requiring the appearance of a person, or the production of documents or other things, or both;

(B) administer any necessary oath; and

(C) take testimony or statements and receive documents or other things.

(c) FILING OF REQUESTS.—Except as provided under subsection (d), an application for execution of a request from a foreign authority under this section may be filed—

(1) in the district in which a person who may be required to appear resides or is located or in which the documents or things to be produced are located;

(2) in cases in which the request seeks the appearance of persons or production of documents or things that may be located in multiple districts, in any one of the districts in which such a person, documents, or things may be located; or

(3) in any case, the district in which a related Federal criminal investigation or prosecution is being conducted, or in the District of Columbia.

(d) SEARCH WARRANT LIMITATION.—An application for execution of a request for a search warrant from a foreign authority under this section, other than an application for a warrant issued as provided under section 2703 of this title, shall

be filed in the district in which the place or person to be searched is located.

(e) SEARCH WARRANT STANDARD.—A Federal judge may issue a search warrant under this section only if the foreign offense for which the evidence is sought involves conduct that, if committed in the United States, would be considered an offense punishable by imprisonment for more than one year under Federal or State law.

(f) SERVICE OF ORDER OR WARRANT.—Except as provided under subsection (d), an order or warrant issued pursuant to this section may be served or executed in any place in the United States.

(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preclude any foreign authority or an interested person from obtaining assistance in a criminal investigation or prosecution pursuant to section 1782 of title 28, United States Code.

(h) DEFINITIONS.—As used in this section, the following definitions shall apply:

(1) FEDERAL JUDGE.—The terms ''Federal judge'' and ''attorney for the Government'' have the meaning given such terms for the purposes of the Federal Rules of Criminal Procedure.

(2) FOREIGN AUTHORITY.—The term ''foreign authority'' means a foreign judicial authority, a foreign authority responsible for the investigation or prosecution of criminal offenses or for proceedings related to the prosecution of criminal offenses, or an authority designated as a competent authority or central authority for the purpose of making requests for assistance pursuant to an agreement or treaty with the United States regarding assistance in criminal matters.

(Added Pub. L. 111–79, §2(4), Oct. 19, 2009, 123 Stat. 2087.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsecs. (a)(2)(A) and (h)(1), are set out in the Appendix to this title.

CHAPTER 224—PROTECTION OF WITNESSES

Sec.
3521. Witness relocation and protection.
3522. Probationers and parolees.
3523. Civil judgments.
3524. Child custody arrangements.
3525. Victims Compensation Fund.
3526. Cooperation of other Federal agencies and State governments; reimbursement of expenses.
3527. Additional authority of Attorney General.
3528. Definition.

AMENDMENTS

1990—Pub. L. 101–647, title XXXV, §3581, Nov. 29, 1990, 104 Stat. 4929, substituted ''State governments; reimbursement of expenses'' for ''State governments'' in item 3526.

§ 3521. Witness relocation and protection

(a)(1) The Attorney General may provide for the relocation and other protection of a witness or a potential witness for the Federal Government or for a State government in an official proceeding concerning an organized criminal activity or other serious offense, if the Attorney General determines that an offense involving a crime of violence directed at the witness with respect to that proceeding, an offense set forth in chapter 73 of this title directed at the witness, or a State offense that is similar in nature to either such offense, is likely to be committed. The Attorney General may also provide for the relocation and other protection of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered on account of the participation of the witness in the judicial proceeding.

(2) The Attorney General shall issue guidelines defining the types of cases for which the exercise of the authority of the Attorney General contained in paragraph (1) would be appropriate.

(3) The United States and its officers and employees shall not be subject to any civil liability on account of any decision to provide or not to provide protection under this chapter.

(b)(1) In connection with the protection under this chapter of a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the Attorney General shall take such action as the Attorney General determines to be necessary to protect the person involved from bodily injury and otherwise to assure the health, safety, and welfare of that person, including the psychological well-being and social adjustment of that person, for as long as, in the judgment of the Attorney General, the danger to that person exists. The Attorney General may, by regulation—

(A) provide suitable documents to enable the person to establish a new identity or otherwise protect the person;

(B) provide housing for the person;

(C) provide for the transportation of household furniture and other personal property to a new residence of the person;

(D) provide to the person a payment to meet basic living expenses, in a sum established in accordance with regulations issued by the Attorney General, for such times as the Attorney General determines to be warranted;

(E) assist the person in obtaining employment;

(F) provide other services necessary to assist the person in becoming self-sustaining;

(G) disclose or refuse to disclose the identity or location of the person relocated or protected, or any other matter concerning the person or the program after weighing the danger such a disclosure would pose to the person, the detriment it would cause to the general effectiveness of the program, and the benefit it would afford to the public or to the person seeking the disclosure, except that the Attorney General shall, upon the request of State or local law enforcement officials or pursuant to a court order, without undue delay, disclose to such officials the identity, location, criminal records, and fingerprints relating to the person relocated or protected when the Attorney General knows or the request indicates that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence;

(H) protect the confidentiality of the identity and location of persons subject to reg-