

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 Repealed.]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.
 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 Repealed.]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, re-phrased 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 exploitation or abuse of children, the Attorney General;

(ii) an unregistered sex offender conducted by the United States Marshals Service, the Director of the United States Marshals Service; or

(iii) 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—

(i) 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; and

(ii) the term “sex offender” means an individual required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.).

(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 States 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

¹ So in original. Probably should be section “3056(a).”