

Apr. 26, 1926, ch. 183, § 3, 44 Stat. 324; May 17, 1932, ch. 190, 47 Stat. 158; June 25, 1936, ch. 804, 49 Stat. 1921; Oct. 13, 1941, ch. 431, § 2, 55 Stat. 736; Dec. 24, 1942, ch. 825, § 1, 56 Stat. 1088).

Section consolidates parts of sections 600c and 608 of title 28, U.S.C., 1940 ed., relating to payment of witnesses. Other provisions of such sections are incorporated in sections 1821 and 1871 of this title.

Provisions in sections 600c and 608 of title 28, U.S.C., 1940 ed., for payment or certification on order of court were omitted as unnecessary and inappropriate on recommendation of the Judicial Conference Committee on Revision of the Judicial Code.

Words in section 608 of title 28, U.S.C., 1940 ed., "to which they appear to be entitled on the certificate of attendance" following the words "all fees" and the concluding phrase "which sum shall be allowed the marshal in the General Accounting Office in his accounts were omitted as unnecessary."

The second paragraph is new. It conforms to Rule 45(e) of the Federal Rules of Civil Procedure but is inconsistent with Rule 17(d) of the Federal Rules of Criminal Procedure and supersedes that rule as to Federal criminal cases. The Department of Justice suggests that Rule 17(d) is unworkable. To attempt compliance each deputy marshal serving process must carry, on the average, \$500 in cash on trips to serve process.

The marshal must advance the money from his personal funds. The Comptroller General has not been able to set up any procedure to make it feasible to advance fees to Government witnesses.

If a witness is served but fails or refuses to appear, the marshal is out of pocket the money advanced and has no recourse. In the exceptional cases of real necessity, the marshal supplies transportation to an indigent witness under established regulations which protect the disbursement.

Changes were made in phraseology.

#### AMENDMENTS

1986—Pub. L. 99-651 amended section generally. Prior to amendment, section read as follows:

"In any case wherein the United States or an officer or agency thereof, is a party, the United States marshal for the district shall pay all fees of witnesses on the certificate of the United States Attorney or Assistant United States Attorney, and in the proceedings before a United States Commissioner, on the certificate of such commissioner.

"In all proceedings, in forma pauperis, for a writ of habeas corpus or in proceedings under section 2255 of this title, the United States marshal for the district shall pay all fees of witnesses for the party authorized to proceed in forma pauperis, on the certificate of the district judge.

"Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof, or upon service of a subpoena issued on behalf of a party, authorized to proceed in forma pauperis, where the payment thereof is to be made by the United States marshal as authorized in this section."

1965—Pub. L. 89-162 inserted provisions that, in all proceedings in forma pauperis, for a writ of habeas corpus, or in proceedings under section 2255 of this title, the United States marshal for the district shall pay all fees of witnesses for the party authorized to proceed in forma pauperis on the certificate of the district judge and that fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of a party authorized to proceed in forma pauperis where the payment thereof is to be made by the United States marshal as authorized in this section.

#### CHANGE OF NAME

"United States magistrate judge" and "magistrate judge" substituted for "United States magistrate" and "magistrate", respectively, in subsec. (a) pursuant to section 321 of Pub. L. 101-650, set out as a note under this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-651 effective 120 days after Nov. 14, 1986, see section 105 of Pub. L. 99-651, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

### § 1826. Recalcitrant witnesses

(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of—

(1) the court proceeding, or

(2) the term of the grand jury, including extensions,

before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.

(c) Whoever escapes or attempts to escape from the custody of any facility or from any place in which or to which he is confined pursuant to this section or section 4243 of title 18, or whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to imprisonment for not more than three years, or a fine of not more than \$10,000, or both.

(Added Pub. L. 91-452, title III, §301(a), Oct. 15, 1970, 84 Stat. 932; amended Pub. L. 98-473, title II, § 1013, Oct. 12, 1984, 98 Stat. 2142.)

#### AMENDMENTS

1984—Subsec. (c). Pub. L. 98-473 added subsec. (c).

### § 1827. Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of certified and otherwise qualified interpreters in judicial proceedings instituted by the United States.

(b)(1) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters, when the Director considers certification of interpreters to be merited, for the hearing impaired (whether or not also speech impaired) and persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States. The Director may certify interpreters for any language if the Director determines that there is a need for certified interpreters in that language. Upon the request of the Judicial Conference of the United

States for certified interpreters in a language, the Director shall certify interpreters in that language. Upon such a request from the judicial council of a circuit and the approval of the Judicial Conference, the Director shall certify interpreters for that circuit in the language requested. The judicial council of a circuit shall identify and evaluate the needs of the districts within a circuit. The Director shall certify interpreters based on the results of criterion-referenced performance examinations. The Director shall issue regulations to carry out this paragraph within 1 year after the date of the enactment of the Judicial Improvements and Access to Justice Act.

(2) Only in a case in which no certified interpreter is reasonably available as provided in subsection (d) of this section, including a case in which certification of interpreters is not provided under paragraph (1) in a particular language, may the services of otherwise qualified interpreters be used. The Director shall provide guidelines to the courts for the selection of otherwise qualified interpreters, in order to ensure that the highest standards of accuracy are maintained in all judicial proceedings subject to the provisions of this chapter.

(3) The Director shall maintain a current master list of all certified interpreters and otherwise qualified interpreters and shall report periodically on the use and performance of both certified and otherwise qualified interpreters in judicial proceedings instituted by the United States and on the languages for which interpreters have been certified. The Director shall prescribe, subject to periodic review, a schedule of reasonable fees for services rendered by interpreters, certified or otherwise, used in proceedings instituted by the United States, and in doing so shall consider the prevailing rate of compensation for comparable service in other governmental entities.

(c)(1) Each United States district court shall maintain on file in the office of the clerk, and each United States attorney shall maintain on file, a list of all persons who have been certified as interpreters by the Director in accordance with subsection (b) of this section. The clerk shall make the list of certified interpreters for judicial proceeding available upon request.

(2) The clerk of the court, or other court employee designated by the chief judge, shall be responsible for securing the services of certified interpreters and otherwise qualified interpreters required for proceedings initiated by the United States, except that the United States attorney is responsible for securing the services of such interpreters for governmental witnesses.

(d)(1) The presiding judicial officer, with the assistance of the Director of the Administrative Office of the United States Courts, shall utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise qualified interpreter, in judicial proceedings instituted by the United States, if the presiding judicial officer determines on such officer's own motion or on the motion of a party that such party (including a defendant in a criminal case), or a witness who may present testimony in such judicial proceedings—

(A) speaks only or primarily a language other than the English language; or

(B) suffers from a hearing impairment (whether or not suffering also from a speech impairment)

so as to inhibit such party's comprehension of the proceedings or communication with counsel or the presiding judicial officer, or so as to inhibit such witness' comprehension of questions and the presentation of such testimony.

(2) Upon the motion of a party, the presiding judicial officer shall determine whether to require the electronic sound recording of a judicial proceeding in which an interpreter is used under this section. In making this determination, the presiding judicial officer shall consider, among other things, the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters, and the complexity or length of the proceeding. In a grand jury proceeding, upon the motion of the accused, the presiding judicial officer shall require the electronic sound recording of the portion of the proceeding in which an interpreter is used.

(e)(1) If any interpreter is unable to communicate effectively with the presiding judicial officer, the United States attorney, a party (including a defendant in a criminal case), or a witness, the presiding judicial officer shall dismiss such interpreter and obtain the services of another interpreter in accordance with this section.

(2) In any judicial proceedings instituted by the United States, if the presiding judicial officer does not appoint an interpreter under subsection (d) of this section, an individual requiring the services of an interpreter may seek assistance of the clerk of court or the Director of the Administrative Office of the United States Courts in obtaining the assistance of a certified interpreter.

(f)(1) Any individual other than a witness who is entitled to interpretation under subsection (d) of this section may waive such interpretation in whole or in part. Such a waiver shall be effective only if approved by the presiding judicial officer and made expressly by such individual on the record after opportunity to consult with counsel and after the presiding judicial officer has explained to such individual, utilizing the services of the most available certified interpreter, or when no certified interpreter is reasonably available, as determined by the presiding judicial officer, the services of an otherwise competent interpreter, the nature and effect of the waiver.

(2) An individual who waives under paragraph (1) of this subsection the right to an interpreter may utilize the services of a noncertified interpreter of such individual's choice whose fees, expenses, and costs shall be paid in the manner provided for the payment of such fees, expenses, and costs of an interpreter appointed under subsection (d) of this section.

(g)(1) There are authorized to be appropriated to the Federal judiciary, and to be paid by the Director of the Administrative Office of the United States Courts, such sums as may be nec-

essary to establish a program to facilitate the use of certified and otherwise qualified interpreters, and otherwise fulfill the provisions of this section and the Judicial Improvements and Access to Justice Act, except as provided in paragraph (3).

(2) Implementation of the provisions of this section is contingent upon the availability of appropriated funds to carry out the purposes of this section.

(3) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses (including for grand jury proceedings) shall, unless direction is made under paragraph (4), be paid by the Attorney General from sums appropriated to the Department of Justice.

(4) Upon the request of any person in any action for which interpreting services established pursuant to subsection (d) are not otherwise provided, the clerk of the court, or other court employee designated by the chief judge, upon the request of the presiding judicial officer, shall, where possible, make such services available to that person on a cost-reimbursable basis, but the judicial officer may also require the prepayment of the estimated expenses of providing such services.

(5) If the Director of the Administrative Office of the United States Courts finds it necessary to develop and administer criterion-referenced performance examinations for purposes of certification, or other examinations for the selection of otherwise qualified interpreters, the Director may prescribe for each examination a uniform fee for applicants to take such examination. In determining the rate of the fee for each examination, the Director shall consider the fees charged by other organizations for examinations that are similar in scope or nature. Notwithstanding section 3302(b) of title 31, the Director is authorized to provide in any contract or agreement for the development or administration of examinations and the collection of fees that the contractor may retain all or a portion of the fees in payment for the services. Notwithstanding paragraph (6) of this subsection, all fees collected after the effective date of this paragraph and not retained by a contractor shall be deposited in the fund established under section 1931 of this title and shall remain available until expended.

(6) Any moneys collected under this subsection may be used to reimburse the appropriations obligated and disbursed in payment for such services.

(h) The presiding judicial officer shall approve the compensation and expenses payable to interpreters, pursuant to the schedule of fees prescribed by the Director under subsection (b)(3).

(i) The term “presiding judicial officer” as used in this section refers to any judge of a United States district court, including a bankruptcy judge, a United States magistrate judge, and in the case of grand jury proceedings conducted under the auspices of the United States attorney, a United States attorney.

(j) The term “judicial proceedings instituted by the United States” as used in this section refers to all proceedings, whether criminal or civil, including pretrial and grand jury proceedings (as well as proceedings upon a petition for

a writ of habeas corpus initiated in the name of the United States by a relator) conducted in, or pursuant to the lawful authority and jurisdiction of a United States district court. The term “United States district court” as used in this subsection includes any court which is created by an Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title.

(k) The interpretation provided by certified or otherwise qualified interpreters pursuant to this section shall be in the simultaneous mode for any party to a judicial proceeding instituted by the United States and in the consecutive mode for witnesses, except that the presiding judicial officer, sua sponte or on the motion of a party, may authorize a simultaneous, or consecutive interpretation when such officer determines after a hearing on the record that such interpretation will aid in the efficient administration of justice. The presiding judicial officer, on such officer’s motion or on the motion of a party, may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.

(l) Notwithstanding any other provision of this section or section 1828, the presiding judicial officer may appoint a certified or otherwise qualified sign language interpreter to provide services to a party, witness, or other participant in a judicial proceeding, whether or not the proceeding is instituted by the United States, if the presiding judicial officer determines, on such officer’s own motion or on the motion of a party or other participant in the proceeding, that such individual suffers from a hearing impairment. The presiding judicial officer shall, subject to the availability of appropriated funds, approve the compensation and expenses payable to sign language interpreters appointed under this section in accordance with the schedule of fees prescribed by the Director under subsection (b)(3) of this section.

(Added Pub. L. 95-539, § 2(a), Oct. 28, 1978, 92 Stat. 2040; amended Pub. L. 100-702, title VII, §§ 702-710, Nov. 19, 1988, 102 Stat. 4654-4657; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104-317, title III, § 306, title IV, § 402(a), Oct. 19, 1996, 110 Stat. 3852, 3854.)

#### REFERENCES IN TEXT

The date of the enactment of the Judicial Improvements and Access to Justice Act, referred to in subsec. (b)(1), is the date of enactment of Pub. L. 100-702, which was approved Nov. 19, 1988.

The Judicial Improvements and Access to Justice Act, referred to in subsec. (g)(1), is Pub. L. 100-702, Nov. 19, 1988, 102 Stat. 4642. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The effective date of this paragraph, referred to in subsec. (g)(5), is the effective date of Pub. L. 104-317, which was approved Oct. 19, 1996.

#### AMENDMENTS

1996—Subsec. (g)(5), (6). Pub. L. 104-317, § 402(a), added par. (5) and redesignated former par. (5) as (6).

Subsec. (l). Pub. L. 104-317, § 306, added subsec. (l).

1988—Subsec. (a). Pub. L. 100-702, § 702, amended subsec. (a) generally, substituting “certified and otherwise

qualified interpreters in judicial proceedings instituted by the United States” for “interpreters in courts of the United States”.

Subsec. (b). Pub. L. 100-702, § 703, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.”

Subsec. (c). Pub. L. 100-702, § 704, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.”

Subsec. (d). Pub. L. 100-702, §§ 705, 710(a), designated existing provisions as par. (1), in introductory provisions, substituted “qualified interpreter” for “competent interpreter”, “judicial proceedings instituted by the United States” for “any criminal or civil action initiated by the United States in a United States district court (including a petition for a writ of habeas corpus initiated in the name of the United States by a relator)”, and “such judicial proceedings” for “such action”, redesignated former pars. (1) and (2) as subpars. (A) and (B), and added par. (2).

Subsec. (e)(2). Pub. L. 100-702, § 710(b), substituted “judicial proceedings instituted by the United States” for “criminal or civil action in a United States district court”.

Subsec. (g)(1) to (3). Pub. L. 100-702, § 706(a), amended pars. (1) to (3) generally. Prior to amendment, pars. (1) to (3) read as follows:

“(1) Except as otherwise provided in this subsection or section 1828 of this title, the salaries, fees, expenses, and costs incident to providing the services of interpreters under subsection (d) of this section shall be paid by the Director of the Administrative Office of the United States Courts from sums appropriated to the Federal judiciary.

“(2) Such salaries, fees, expenses, and costs that are incurred with respect to Government witnesses shall, unless direction is made under paragraph (3) of this subsection, be paid by the Attorney General from sums appropriated to the Department of Justice.

“(3) The presiding judicial officer may in such officer’s discretion direct that all or part of such salaries, fees, expenses, and costs shall be apportioned between or among the parties or shall be taxed as costs in a civil action.”

Subsec. (g)(4), (5). Pub. L. 100-702, § 706(b), added par. (4) and redesignated former par. (4) as (5).

Subsec. (h). Pub. L. 100-702, § 707, amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “In any action in a court of the United States where the presiding judicial officer establishes, fixes, or approves the compensation and expenses payable to an interpreter from funds appropriated to the Federal judiciary, the presiding judicial officer shall not establish, fix, or approve compensation and expenses in excess of the maximum allowable under the schedule of fees for services prescribed pursuant to subsection (b) of this section.”

Subsec. (i). Pub. L. 100-702, § 708, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: “The term ‘presiding judicial officer’ as used in this section and section 1828 of this title includes a

judge of a United States district court, a United States magistrate, and a referee in bankruptcy.”

Subsec. (j). Pub. L. 100-702, § 708, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: “The term ‘United States district court’ as used in this section and section 1828 of this title includes any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States established by section 132 of this title.”

Subsec. (k). Pub. L. 100-702, § 709, amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: “The interpretation provided by certified interpreters pursuant to this section shall be in the consecutive mode except that the presiding judicial officer, with the approval of all interested parties, may authorize a simultaneous or summary interpretation when such officer determines that such interpretation will aid in the efficient administration of justice. The presiding judicial officer on such officer’s motion or on the motion of a party may order that special interpretation services as authorized in section 1828 of this title be provided if such officer determines that the provision of such services will aid in the efficient administration of justice.”

#### CHANGE OF NAME

“United States magistrate judge” substituted for “United States magistrate” in subsec. (i) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-702, title VII, § 712, Nov. 19, 1988, 102 Stat. 4657, provided that: “This title [amending this section and enacting provisions set out as notes under this section and section 1 of this title] shall become effective upon the date of enactment [Nov. 19, 1988].”

#### EFFECTIVE DATE

Section effective ninety days after Oct. 28, 1978, see section 10(b) of Pub. L. 95-539, set out as an Effective Date of 1978 Amendment note under section 602 of this title.

#### SHORT TITLE

For short title of Pub. L. 95-539 as “Court Interpreters Act”, see Short Title of 1978 Amendments note set out under section 1 of this title.

#### PAYMENT FOR CONTRACTUAL SERVICES

Pub. L. 104-317, title IV, § 402(b), Oct. 19, 1996, 110 Stat. 3854, provided that: “Notwithstanding sections 3302(b), 1341, and 1517 of title 31, United States Code, the Director of the Administrative Office of the United States Courts may include in any contract for the development or administration of examinations for interpreters (including such a contract entered into before the date of the enactment of this Act [Oct. 19, 1996]) a provision which permits the contractor to collect and retain fees in payment for contractual services in accordance with section 1827(g)(5) of title 28, United States Code.”

#### IMPACT ON EXISTING PROGRAMS

Pub. L. 100-702, title VII, § 711, Nov. 19, 1988, 102 Stat. 4657, provided that: “Nothing in this title [amending this section and enacting provisions set out as notes under this section and section 1 of this title] shall be construed to terminate or diminish existing programs for the certification of interpreters.”

### § 1828. Special interpretation services

(a) The Director of the Administrative Office of the United States Courts shall establish a program for the provision of special interpretation services in criminal actions and in civil ac-