

## CHANGE OF NAME

“UNITED STATES MAGISTRATE JUDGES” substituted for “UNITED STATES MAGISTRATES” in chapter heading pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

**§ 3401. Misdemeanors; application of probation laws**

(a) When specially designated to exercise such jurisdiction by the district court or courts he serves, any United States magistrate judge shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district.

(b) Any person charged with a misdemeanor, other than a petty offense may elect, however, to be tried before a district judge for the district in which the offense was committed. The magistrate judge shall carefully explain to the defendant that he has a right to trial, judgment, and sentencing by a district judge and that he may have a right to trial by jury before a district judge or magistrate judge. The magistrate judge may not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the magistrate judge and expressly and specifically waives trial, judgment, and sentencing by a district judge. Any such consent and waiver shall be made in writing or orally on the record.

(c) A magistrate judge who exercises trial jurisdiction under this section, and before whom a person is convicted or pleads either guilty or nolo contendere, may, with the approval of a judge of the district court, direct the probation service of the court to conduct a presentence investigation on that person and render a report to the magistrate judge prior to the imposition of sentence.

(d) The probation laws shall be applicable to persons tried by a magistrate judge under this section, and such officer shall have power to grant probation and to revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge.

(e) Proceedings before United States magistrate judges under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. For purposes of appeal a copy of the record of such proceedings shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.

(f) The district court may order that proceedings in any misdemeanor case be conducted before a district judge rather than a United States magistrate judge upon the court's own motion or, for good cause shown, upon petition by the attorney for the Government. Such petition should note the novelty, importance, or complexity of the case, or other pertinent factors, and be filed in accordance with regulations promulgated by the Attorney General.

(g) The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title. The magistrate judge may, in

the case of any misdemeanor, other than a petty offense, involving a juvenile in which consent to trial before a magistrate judge has been filed under subsection (b), exercise all powers granted to the district court under chapter 403 of this title. For purposes of this subsection, proceedings under chapter 403 of this title may be instituted against a juvenile by a violation notice or complaint, except that no such case may proceed unless the certification referred to in section 5032 of this title has been filed in open court at the arraignment.

(h) The magistrate judge shall have power to modify, revoke, or terminate supervised release of any person sentenced to a term of supervised release by a magistrate judge.

(i) A district judge may designate a magistrate judge to conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for such modification, revocation, or termination by the judge, including, in the case of revocation, a recommended disposition under section 3583(e) of this title. The magistrate judge shall file his or her proposed findings and recommendations.

(June 25, 1948, ch. 645, 62 Stat. 830; Pub. L. 85-508, §12(j), July 7, 1958, 72 Stat. 348; Pub. L. 90-578, title III, §302(a), Oct. 17, 1968, 82 Stat. 1115; Pub. L. 96-82, §7(a), (b), Oct. 10, 1979, 93 Stat. 645, 646; Pub. L. 98-473, title II, §223(j), Oct. 12, 1984, 98 Stat. 2029; Pub. L. 100-690, title VII, §7072(a), Nov. 18, 1988, 102 Stat. 4405; Pub. L. 101-650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 102-572, title I, §103, Oct. 29, 1992, 106 Stat. 4507; Pub. L. 104-317, title II, §202(a), Oct. 19, 1996, 110 Stat. 3848; Pub. L. 106-518, title II, §203(a), Nov. 13, 2000, 114 Stat. 2414.)

## HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§576, 576b, 576c, 576d (Oct. 9, 1940, ch. 785, §§1, 3-5, 54 Stat. 1058, 1059).

The phrase “the commissioner shall have power to grant probation” was inserted in paragraph (c) in order to make clear the authority of the commissioner to grant probation without application to the District judge.

Four sections were consolidated herein with minor rearrangements and deletion of unnecessary words.

## AMENDMENTS

2000—Subsec. (b). Pub. L. 106-518, §203(a)(1), struck out “that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction,” after “petty offense”.

Subsec. (g). Pub. L. 106-518, §203(a)(2), substituted first sentence for former first sentence which read: “The magistrate judge may, in a petty offense case involving a juvenile, that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction, exercise all powers granted to the district court under chapter 403 of this title.”, substituted “the case of any misdemeanor, other than a petty offense,” for “any other class B or C misdemeanor case” in second sentence, and struck out at end “No term of imprisonment shall be imposed by the magistrate in any such case.”

1996—Subsec. (b). Pub. L. 104-317, §202(a)(1), inserted “, other than a petty offense that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction,” after “misdemeanor”, substituted “tried before a district judge” for “tried before a judge of the district court” and “by a district

judge" for "by a judge of the district court", substituted "magistrate judge" for "magistrate" in two places, and substituted "The magistrate judge may not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the magistrate judge and expressly and specifically waives trial, judgment, and sentencing by a district judge. Any such consent and waiver shall be made in writing or orally on the record." for "The magistrate shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the magistrate that specifically waives trial, judgment, and sentencing by a judge of the district court."

Subsec. (g). Pub. L. 104-317, §202(a)(2), substituted "The magistrate judge may, in a petty offense case involving a juvenile, that is a class B misdemeanor charging a motor vehicle offense, a class C misdemeanor, or an infraction, exercise all powers granted to the district court under chapter 403 of this title. The magistrate judge may, in any other class B or C misdemeanor case involving a juvenile in which consent to trial before a magistrate judge has been filed under subsection (b), exercise all powers granted to the district court under chapter 403 of this title." for "The magistrate may, in a Class B or C misdemeanor case, or infraction case, involving a juvenile in which consent to trial before a magistrate has been filed under subsection (b) of this section, exercise all powers granted to the district court under chapter 403 of this title."

1992—Subsec. (d). Pub. L. 102-572, §103(1), substituted "and to revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge" for "and to revoke or reinstate the probation of any person granted probation by him".

Subsecs. (h), (i). Pub. L. 102-572, §103(2), added subsecs. (h) and (i).

1988—Subsec. (g). Amendment by Pub. L. 100-690 directing that "and section 4216" be struck out after "under chapter 402" in subsec. (g), was executed to subsec. (g) applicable to offenses committed prior to Nov. 1, 1987, as the probable intent of Congress, in view of the amendment by section 223(j) of Pub. L. 98-473. See 1984 Amendment notes below.

1984—Subsecs. (g), (h). Pub. L. 98-473, §223(j)(1), redesignated subsec. (h) as (g) and struck out former subsec. (g) which related to powers of magistrate in case involving youthful offender. Former subsec. (g), as amended by Pub. L. 100-690, read as follows: "The magistrate may, in a case involving a youth offender in which consent to trial before a magistrate has been filed under subsection (b) of this section, impose sentence and exercise the other powers granted to the district court under chapter 402 of this title, except that—

"(1) the magistrate may not sentence the youth offender to the custody of the Attorney General pursuant to such chapter for a period in excess of 1 year for conviction of a misdemeanor or 6 months for conviction of a petty offense;

"(2) such youth offender shall be released conditionally under supervision no later than 3 months before the expiration of the term imposed by the magistrate, and shall be discharged unconditionally on or before the expiration of the maximum sentence imposed; and

"(3) the magistrate may not suspend the imposition of sentence and place the youth offender on probation for a period in excess of 1 year for conviction of a misdemeanor or 6 months for conviction of a petty offense."

Pub. L. 98-473, §223(j)(2), which directed amendment of subsec. (h) by substituting reference to Class B or C misdemeanor case or an infraction case, for reference to petty offense case, was executed to subsec. (g) as the probable intent of Congress in view of redesignation of subsec. (h) as (g) by section 223(j)(1) of Pub. L. 98-473, see above.

1979—Pub. L. 96-82, §7(b), substituted "Misdemeanors" for "Minor offenses" in section catchline.

Subsec. (a). Pub. L. 96-82, §7(a)(1), substituted "any United States magistrate shall have jurisdiction to try

persons accused of, and sentence persons convicted of, misdemeanors committed" for "and under such conditions as may be imposed by the terms of the special designation, any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, minor offenses committed".

Subsec. (b). Pub. L. 96-82, §7(a)(2), substituted reference to persons charged with misdemeanors for reference to persons charged with minor offenses, substituted reference to right to trial, judgment, and sentencing for reference to right to trial, and struck out provisions relating to the waiver of the right to a trial by jury.

Subsec. (f). Pub. L. 96-82, §7(a)(3), substituted provisions authorizing the district court to order misdemeanor proceedings to be conducted before a district court judge for provisions defining term "minor offenses".

Subsecs. (g), (h). Pub. L. 96-82, §7(a)(4), added subsecs. (g) and (h).

1968—Pub. L. 90-578 substituted "Minor offenses" for "Petty offenses" and struck out provision for "fees" in section catchline.

Subsec. (a). Pub. L. 90-578 provided for trial by a magistrate rather than a commissioner of minor offenses instead of petty offenses, under such conditions as may be imposed by the terms of the special designation, required imposition of sentence after conviction instead of sentencing of person committing the offense, and omitted provision for trial of offense committed in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction.

Subsec. (b). Pub. L. 90-578 provided that the person be charged with a minor offense rather than a petty offense, prescribed trial in district court for the district in which the offense was committed, and required an explanation to be given of right to trial before a district court judge with right to jury trial before such judge and that the written consent to trial before the magistrate specifically waive trial before the district court judge and any right to a jury trial.

Subsec. (c). Pub. L. 90-578 substituted authorization for magistrate to conduct presentence investigation for prior provisions making probation laws applicable to persons tried by commissioners having power to grant probation, now incorporated in subsec. (d) of this section.

Subsec. (d). Pub. L. 90-578 incorporated existing provisions of former subsec. (c) of this section in provisions designated as subsec. (d), substituted "magistrate" for "commissioner", authorized revocation or reinstatement of probation by the officer granting the probation, and struck out former provision for receipt of fees provided by law for services as a commissioner.

Subsec. (e). Pub. L. 90-578 substituted requirement that proceedings before magistrates be taken down by a court reporter or recorded by sound recording equipment and provision for availability of a copy of the record of such proceedings for appeal purposes to be paid by the Director at Federal expense when a person is unable to pay or give security therefor for prior provisions making the section inapplicable to the District of Columbia and interpreting it as not repealing or limiting existing jurisdiction, power or authority of commissioners appointed in the several national parks.

Subsec. (f). Pub. L. 90-578 added subsec. (f).

1958—Subsec. (e). Pub. L. 85-508 struck out provisions which related to commissioners appointed for Alaska. See section 81A of Title 28, Judiciary and Judicial Procedure, which establishes a United States District Court for the State of Alaska.

#### CHANGE OF NAME

"United States magistrate judge", "magistrate judge", and "magistrate judges" substituted for "United States magistrate", "magistrate", and "magistrates", respectively, in subsecs. (a), (c), (e), and (f), and "magistrate judge under" substituted for "magistrate under" in subsec. (d), pursuant to section 321 of

Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101 of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of Title 28, Judiciary and Judicial Procedure, and preceding former section 21 of Title 48, Territories and Insular Possessions.

### § 3402. Rules of procedure, practice and appeal<sup>1</sup>

In all cases of conviction by a United States magistrate judge an appeal of right shall lie from the judgment of the magistrate judge to a judge of the district court of the district in which the offense was committed.

(June 25, 1948, ch. 645, 62 Stat. 831; Pub. L. 90-578, title III, § 302(b), Oct. 17, 1968, 82 Stat. 1116; Pub. L. 100-702, title IV, § 404(b)(2), Nov. 19, 1988, 102 Stat. 4651; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

#### HISTORICAL AND REVISION NOTES

Based on title 18 U.S.C., 1940 ed., § 576a (Oct. 9, 1940, ch. 685, § 2, 54 Stat. 1059).

#### AMENDMENTS

1988—Pub. L. 100-702 struck out second par. which read as follows: “The Supreme Court shall prescribe rules of procedure and practice for the trial of cases before magistrates and for taking and hearing of appeals to the judges of the district courts of the United States.”

1968—Pub. L. 90-578 provided that the appeal shall be of right, substituted “a United States magistrate”, “magistrate”, and “magistrates” for “United States commissioners”, “commissioner”, and “commissioners”, respectively, and provided that the appeals be to the judge of the district court and not to the district court and that the rules of the Supreme Court relate to appeals to the judges of the district courts rather than to the district courts.

#### CHANGE OF NAME

“United States magistrate judge” and “magistrate judge” substituted for “United States magistrate” and “magistrate”, respectively, in text pursuant to section

<sup>1</sup>Section catchline was not amended to conform to change made in text by Pub. L. 100-702.

321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-702 effective Dec. 1, 1988, see section 407 of Pub. L. 100-702, set out as a note under section 2071 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-578 effective Oct. 17, 1968, except when a later effective date is applicable, which is the earlier of date when implementation of amendment by appointment of magistrates [now United States magistrate judges] and assumption of office takes place or third anniversary of enactment of Pub. L. 90-578 on Oct. 17, 1968, see section 403 of Pub. L. 90-578, set out as a note under section 631 of title 28, Judiciary and Judicial Procedure.

## CHAPTER 221—ARRAIGNMENT, PLEAS AND TRIAL

#### Sec.

3431. Term of court; power of court unaffected by expiration—Rule.
3432. Indictment and list of jurors and witnesses for prisoner in capital cases.
3433. Arraignment—Rule.
3434. Presence of defendant—Rule.
3435. Receiver of stolen property triable before or after principal.
3436. Consolidation of indictments or informations—Rule.
3437. Severance—Rule.
3438. Pleas—Rule.
3439. Demurrers and special pleas in bar or abatement abolished; relief on motion—Rule.
3440. Defenses and objections determined on motion—Rule.
3441. Jury; number of jurors; waiver—Rule.
3442. Jurors, examination, peremptory challenges; alternates—Rule.
3443. Instructions to jury—Rule.
3444. Disability of judge—Rule.
3445. Motion for judgment of acquittal—Rule.
3446. New trial—Rule.

### § 3431. Term of court; power of court unaffected by expiration—(Rule)

#### SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Expiration of term without significance in criminal cases, Rule 45(c).

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

#### REFERENCES IN TEXT

Rule 45(c) of the Federal Rules of Criminal Procedure, referred to in text, was rescinded Feb. 28, 1966, eff. July 1, 1966.

### § 3432. Indictment and list of jurors and witnesses for prisoner in capital cases

A person charged with treason or other capital offense shall at least three entire days before commencement of trial, excluding intermediate weekends and holidays, be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness, except that such list of the veniremen and witnesses need not be furnished if the court finds by a preponderance of the evidence that providing the list may jeopardize the life or safety of any person.