

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witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity, was repealed by Pub.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) 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,<sup>1</sup> 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—

<sup>1</sup> So in original. Probably should be section “3056(a),”.

(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.).<sup>2</sup>

(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 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)(iii) 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)(iii), 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 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 dis-

<sup>2</sup> See References in Text note below.

closure 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; Pub. L. 112-206, § 4(a), Dec. 7, 2012, 126 Stat. 1492.)

#### REFERENCES IN TEXT

The Sex Offender Registration and Notification Act, referred to in subsec. (a)(1)(D)(ii), is title I of Pub. L. 109-248, July 27, 2006, 120 Stat. 590, which was classified principally to subchapter I (§16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare, prior to editorial reclassification as chapter 209 (§20901 et seq.) of Title 34, Crime Control and Law Enforcement. For complete classification of this Act to the Code, see Short Title of 2006 Act note set out under section 10101 of Title 34 and Tables.

#### 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

2012—Subsec. (a)(1)(A)(ii), (iii). Pub. L. 112-206, § 4(a)(1)(A), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (a)(1)(D). Pub. L. 112-206, § 4(a)(1)(B), substituted “paragraph—” for “paragraph,” inserted cl. (i) designation before “the term”, substituted “years; and” for “years.”, and added cl. (ii).

Subsec. (a)(6)(A). Pub. L. 112-206, § 4(a)(2)(A), substituted “United States” for “United State”.

Subsec. (a)(9), (10). Pub. L. 112-206, § 4(a)(2)(B), (C), substituted “(1)(A)(iii)” for “(1)(A)(ii)”.

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 officer, 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”.