

jury exceeds the capacity of the grand jury to discharge its obligations, the district court may order an additional special grand jury for that district to be impaneled.

(Added Pub. L. 91-452, title I, §101(a), Oct. 15, 1970, 84 Stat. 924.)

#### Editorial Notes

##### REFERENCES IN TEXT

The criminal laws of the United States, referred to in subsec. (a), are classified generally to this title.

#### § 3333. Reports

(a) A special grand jury impaneled by any district court, with the concurrence of a majority of its members, may, upon completion of its original term, or each extension thereof, submit to the court a report—

(1) concerning noncriminal misconduct, malfeasance, or misfeasance in office involving organized criminal activity by an appointed public officer or employee as the basis for a recommendation of removal or disciplinary action; or

(2) regarding organized crime conditions in the district.

(b) The court to which such report is submitted shall examine it and the minutes of the special grand jury and, except as otherwise provided in subsections (c) and (d) of this section, shall make an order accepting and filing such report as a public record only if the court is satisfied that it complies with the provisions of subsection (a) of this section and that—

(1) the report is based upon facts revealed in the course of an investigation authorized by subsection (a) of section 3332 and is supported by the preponderance of the evidence; and

(2) when the report is submitted pursuant to paragraph (1) of subsection (a) of this section, each person named therein and any reasonable number of witnesses in his behalf as designated by him to the foreman of the grand jury were afforded an opportunity to testify before the grand jury prior to the filing of such report, and when the report is submitted pursuant to paragraph (2) of subsection (a) of this section, it is not critical of an identified person.

(c)(1) An order accepting a report pursuant to paragraph (1) of subsection (a) of this section and the report shall be sealed by the court and shall not be filed as a public record or be subject to subpoena or otherwise made public (i) until at least thirty-one days after a copy of the order and report are served upon each public officer or employee named therein and an answer has been filed or the time for filing an answer has expired, or (ii) if an appeal is taken, until all rights of review of the public officer or employee named therein have expired or terminated in an order accepting the report. No order accepting a report pursuant to paragraph (1) of subsection (a) of this section shall be entered until thirty days after the delivery of such report to the public officer or body pursuant to paragraph (3) of subsection (c) of this section. The court may issue such orders as it shall deem appropriate to prevent unauthorized publication of a report.

Unauthorized publication may be punished as contempt of the court.

(2) Such public officer or employee may file with the clerk a verified answer to such a report not later than twenty days after service of the order and report upon him. Upon a showing of good cause, the court may grant such public officer or employee an extension of time within which to file such answer and may authorize such limited publication of the report as may be necessary to prepare such answer. Such an answer shall plainly and concisely state the facts and law constituting the defense of the public officer or employee to the charges in said report, and, except for those parts thereof which the court determines to have been inserted scandalously, prejudiciously, or unnecessarily, such answer shall become an appendix to the report.

(3) Upon the expiration of the time set forth in paragraph (1) of subsection (c) of this section, the United States attorney shall deliver a true copy of such report, and the appendix, if any, for appropriate action to each public officer or body having jurisdiction, responsibility, or authority over each public officer or employee named in the report.

(d) Upon the submission of a report pursuant to subsection (a) of this section, if the court finds that the filing of such report as a public record may prejudice fair consideration of a pending criminal matter, it shall order such report sealed and such report shall not be subject to subpoena or public inspection during the pendency of such criminal matter, except upon order of the court.

(e) Whenever the court to which a report is submitted pursuant to paragraph (1) of subsection (a) of this section is not satisfied that the report complies with the provisions of subsection (b) of this section, it may direct that additional testimony be taken before the same grand jury, or it shall make an order sealing such report, and it shall not be filed as a public record or be subject to subpoena or otherwise made public until the provisions of subsection (b) of this section are met. A special grand jury term may be extended by the district court beyond thirty-six months in order that such additional testimony may be taken or the provisions of subsection (b) of this section may be met.

(f) As used in this section, “public officer or employee” means any officer or employee of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any political subdivision, or any department, agency, or instrumentality thereof.

(Added Pub. L. 91-452, title I, §101(a), Oct. 15, 1970, 84 Stat. 924.)

#### § 3334. General provisions

The provisions of chapter 215, title 18, United States Code, and the Federal Rules of Criminal Procedure applicable to regular grand juries shall apply to special grand juries to the extent not inconsistent with sections 3331, 3332, or 3333 of this chapter.

(Added Pub. L. 91-452, title I, §101(a), Oct. 15, 1970, 84 Stat. 926.)

**CHAPTER 217—INDICTMENT AND  
INFORMATION**

- Sec.  
3361. Form and contents—Rule.  
3362. Waiver of indictment and prosecution on information—Rule.  
3363. Joinder of offenses—Rule.  
3364. Joinder of defendants—Rule.  
3365. Amendment of information—Rule.  
3366. Bill of particulars—Rule.  
3367. Dismissal—Rule.

**§ 3361. Form and contents—(Rule)**

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Contents and form; striking surplusage, Rule 7(a), (c), (d).

(June 25, 1948, ch. 645, 62 Stat. 830.)

**§ 3362. Waiver of indictment and prosecution on information—(Rule)**

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Waiver of indictment for offenses not punishable by death, Rule 7(b).

(June 25, 1948, ch. 645, 62 Stat. 830.)

**§ 3363. Joinder of offenses—(Rule)**

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Joinder of two or more offenses in same indictment, Rule 8(a).

Trial together of indictments or informations, Rule 13.

(June 25, 1948, ch. 645, 62 Stat. 830.)

**§ 3364. Joinder of defendants—(Rule)**

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Joinder of two or more defendants charged in same indictment, Rule 8(b).

Relief from prejudicial joinder, Rule 14.

(June 25, 1948, ch. 645, 62 Stat. 830.)

**§ 3365. Amendment of information—(Rule)**

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Amendment of information, time and conditions, Rule 7(e).

(June 25, 1948, ch. 645, 62 Stat. 830.)

**§ 3366. Bill of particulars—(Rule)**

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Bill of particulars for cause; motion after arraignment; time; amendment, Rule 7(f).

(June 25, 1948, ch. 645, 62 Stat. 830.)

**§ 3367. Dismissal—(Rule)**

SEE FEDERAL RULES OF CRIMINAL PROCEDURE

Dismissal filed by Attorney General or United States Attorney, Rule 48.

Dismissal on objection to array of grand jury or lack of legal qualification of individual grand juror, Rule 6(b)(2).

(June 25, 1948, ch. 645, 62 Stat. 830.)

**CHAPTER 219—TRIAL BY UNITED STATES  
MAGISTRATE JUDGES**

- Sec.  
3401. Misdemeanors; application of probation laws.

- Sec.  
3402. Rules of procedure, practice and appeal.

**Editorial Notes**

AMENDMENTS

1979—Pub. L. 96-82, §7(c), Oct. 10, 1979, 93 Stat. 646, substituted “Misdemeanors” for “Minor offenses” in item 3401.

1968—Pub. L. 90-578, title III, §§301(c), 302(c), Oct. 17, 1968, 82 Stat. 1115, 1116, substituted “TRIAL BY UNITED STATES MAGISTRATES” for “TRIAL BY COMMISSIONERS” in chapter heading, and substituted “Minor offenses” for “Petty offenses” and struck out “fees” after “probation laws” in item 3401.

**Statutory Notes and Related Subsidiaries**

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