

(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.

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 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),