

**EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE**

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

**TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:**

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FEDERAL RULES OF CRIMINAL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules submitted proposed amendments to Rules 12.3, 15,¹ 21, and 32.1, with a recommendation that they be approved and transmitted to the Judicial Conference. The proposed amendments were circulated to the bench and bar for comment in August 2008. Scheduled public hearings on the amendments were canceled. The two individuals asking to testify on the proposed amendments agreed to present their testimony in conjunction with the advisory committee's April 2009 meeting.

The proposed amendment to Rule 12.3 provides that a victim's address and telephone number should be disclosed to the defense when a public-authority defense is raised only if the defendant establishes a need for the information. The amendment parallels a similar change made in 2008 to Rule 12.1, dealing with notice of an alibi defense, providing the court with discretion to order disclosure of the information or to fashion an alternative procedure that gives the defendant the information necessary to prepare a defense but also protects the victim's interests. The amendments are consistent with the Crime Victims' Rights Act (18 U.S.C. § 3771).

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¹The Supreme Court declined to approve the proposed amendment to Criminal Rule 15. Because the proposed amendment to Rule 15 will not be transmitted to Congress, the discussion of the amendment is not included in the report.

The proposed amendment to Rule 21(b) requires a court to consider the convenience of victims – as well as the convenience of the parties and witnesses and the interests of justice – in determining whether to transfer all or part of the proceedings to another district for trial. The amendment would apply only if a defendant moves to transfer the case for convenience; it does not apply to motions for transfer based on prejudice under Rule 21(a).

The proposed amendments to Rule 32.1 are designed to end the confusion over the applicability of 18 U.S.C. § 3143(a) – to which the current rule refers – to proceedings involving the release or detention of a person charged with violating a condition of probation or supervised release. The amendments make clear that only paragraph (a)(1) of § 3143, and not (a)(2), applies to the proceedings. The proposed amendments also clarify the burden of proof in such proceedings, which, under the case law, is to establish by *clear and convincing evidence* that the person will not flee or pose a danger to any other person or to the community.

The advisory committee decided not to proceed with proposed amendments to Rule 5 that were published for comment. The proposed amendments would have required a judge deciding whether to release or detain a defendant specifically to consider the right of a victim to be reasonably protected from the accused. The advisory committee concluded that the amendments were redundant of provisions in the Crime Victims' Rights Act (18 U.S.C. § 3771) and the Bail Reform Act (18 U.S.C. §§ 3141-3156).

The Committee concurred with the advisory committee's recommendations.

Recommendation: That the Judicial Conference —

Approve the proposed amendments to Criminal Rules 12.3, 21, and 32.1 and transmit them to the Supreme Court for its consideration with a recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

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