

more than one-half of the maximum fine prescribed for the punishment of the crime solicited, or both; or if the crime solicited is punishable by life imprisonment or death, shall be imprisoned for not more than twenty years.

(b) It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited. A renunciation is not “voluntary and complete” if it is motivated in whole or in part by a decision to postpone the commission of the crime until another time or to substitute another victim or another but similar objective. If the defendant raises the affirmative defense at trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

(c) It is not a defense to a prosecution under this section that the person solicited could not be convicted of the crime because he lacked the state of mind required for its commission, because he was incompetent or irresponsible, or because he is immune from prosecution or is not subject to prosecution.

(Added Pub. L. 98-473, title II, §1003(a), Oct. 12, 1984, 98 Stat. 2138; amended Pub. L. 99-646, §26, Nov. 10, 1986, 100 Stat. 3597; Pub. L. 103-322, title XXXIII, §330016(2)(A), Sept. 13, 1994, 108 Stat. 2148.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322 inserted “(notwithstanding section 3571)” before “fined not more than one-half”.

1986—Subsec. (a). Pub. L. 99-646 substituted “property or against the person of another” for “the person or property of another” and inserted “life imprisonment or” before “death”.

CHAPTER 21—CONTEMPTS

Sec.	
401.	Power of court.
402.	Contempts constituting crimes.
403.	Protection of the privacy of child victims and child witnesses.

AMENDMENTS

1990—Pub. L. 101-647, title II, §225(b)(2), Nov. 29, 1990, 104 Stat. 4806, added item 403.

1949—Act May 24, 1949, ch. 139, §8(a), (b), 63 Stat. 90, struck out “CONSTITUTING CRIMES” in chapter heading and substituted “Contempts constituting crimes” for “Criminal contempts” in item 402.

§ 401. Power of court

A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—

- (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
- (2) Misbehavior of any of its officers in their official transactions;
- (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 107-273, div. B, title III, §3002(a)(1), Nov. 2, 2002, 116 Stat. 1805.)

HISTORICAL AND REVISION NOTES

Based on section 385 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, §268, 36 Stat. 1163).

Said section 385 conferred two powers. The first part authorizing courts of the United States to impose and administer oaths will remain in title 28, U.S.C., 1940 ed., Judicial Code and Judiciary. The second part relating to contempt of court constitutes this section.

Changes in phraseology and arrangement were made.

AMENDMENTS

2002—Pub. L. 107-273 inserted “or both,” after “fine or imprisonment,” in introductory provisions.

§ 402. Contempts constituting crimes

Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by a fine under this title or imprisonment, or both.

Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months.

This section shall not be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced in this section may be punished in conformity to the prevailing usages at law.

For purposes of this section, the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 701; May 24, 1949, ch. 139, §8(c), 63 Stat. 90; Pub. L. 101-647, title XII, §1205(c), Nov. 29, 1990, 104 Stat. 4830; Pub. L. 103-322, title XXXIII, §§330011(f), 330016(2)(E), Sept. 13, 1994, 108 Stat. 2145, 2148.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 386, 387, 389, and 390a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Oct. 15, 1914, ch. 323, §§1, 21, 22, 24, 38 Stat. 730, 738, 739).

Section 21 of the Clayton Act, section 386 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, is here consolidated with parts of sections 1, 22, and 24 of the same act. Section 1 of said act, section 390a of title 28 U.S.C., 1940 ed., Judicial Code and Judiciary, defined person or persons. Section 22 of said act, section 387 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary,

regulated the procedure and provided for the punishment of contempts. Section 24 of said act, section 389 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, limited the application of these sections to certain kinds of contempt.

In transferring these sections to this title and in consolidating them numerous changes of phraseology were necessary which do not, however, change their meaning or substance. Words "corporation or association" were inserted after "any person" in substitution for the definition provisions of section 390a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, which read as follows: "The word 'person' or 'persons' wherever used in sections 381-383, 386-390a of this title, sections 12, 13, 14-19, 20, 21, 22-27 and 44 of title 15, and section 412 of title 18 shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

The words "any person, corporation, or association," unqualified except by the context of the section mean all that the more lengthy definition included. Only those persons, corporations, and associations who were parties to the order or had actual notice of it may be punished for contempt. (See *McCaully v. First Trust & Savings Bank*, C.C.A. Ill. 1921, 276 F. 117. See, also *National Labor Relations Board v. Blackstone Mfg. Co.*, C.C.A. 1941, 123 F. 2d 633.) The fact that the contemnor was incorporated or organized under a foreign law or under the laws of a particular State or Territory would hardly be relevant to the issue of criminal contempt.

As noted above these sections were part of the Clayton Act, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes." Whatever doubt might have existed as to whether the contempt provisions were variously limited to antitrust cases seems to be dispelled by the case of *Sandefur v. Canoe Creek Coal Co.* (C.C.A. Ky. 1923, 293 F. 379, certified question answered 45 S. Ct. 18, 266 U.S. 42, 69 L. Ed. 162, 35 A.L.R. 451), where the court says: "The act, considered as a whole, covers several more or less distinct subjects. * * * The first eight sections pertain directly to the subject of trust and monopolies; section 9 concerns interstate commerce; section 10, combinations among common carriers; section 11, proceedings to enforce certain provisions of the act; sections 12-16, antitrust procedure and remedies; sections 17-19, regulations of injunction and restraining orders in all cases; section 20 limits the power of an equity court to issue any injunction in a certain class of cases, viz., between employer and the employee; and sections 21-24 pertain to procedure in any district court, punishing contemptuous disregard of any order of such court, providing the act constituting contempt is also a criminal offense. Observing this relation of the various parts of the act to each other, we think 'within the purview of this act' must refer to that portion of the act which most broadly covers the subject-matter to which section 22 is devoted, and this portion is section 21, which reaches all cases where the act of contempt is also a criminal offense. We know of nothing in the legislative history of the act, or within the common knowledge as to the then existing situation, which justifies us in thinking that 'within the purview of this act,' in section 22, meant to limit its effect to the employer-employee provisions of section 20, or even to the antitrust scope of some of the earlier sections." (See also *Michaelson v. United States*, 1924, 45 S. Ct. 18, 166 U.S. 42, 69 L. Ed. 162, 35 A.L.R. 451, and H. Rept. No. 613, 62d Cong., 2d sess., to accompany H.R. 15657.)

1949 ACT

This amendment [see section 8] corrects the catchline of section 402 of title 18, U.S.C., to better represent the section content.

AMENDMENTS

1994—Pub. L. 103-322, §330016(2)(E), substituted "punished by a fine under this title" for "punished by fine" in first par.

Pub. L. 103-322, §330011(f), amended directory language of Pub. L. 101-647, §1205(c). See 1990 Amendment note below.

1990—Pub. L. 101-647, §1205(c), as amended by Pub. L. 103-322, §330011(f), added par. defining "State".

1949—Act May 24, 1949, substituted "Contempts constituting crimes" for "Criminal contempts" in section catchline.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(f) of Pub. L. 103-322 provided that the amendment made by that section is effective as of the date on which section 1205(c) of Pub. L. 101-647, which amended this section, took effect.

§ 403. Protection of the privacy of child victims and child witnesses

A knowing or intentional violation of the privacy protection accorded by section 3509 of this title is a criminal contempt punishable by not more than one year's imprisonment, or a fine under this title, or both.

(Added Pub. L. 101-647, title II, §225(b)(1), Nov. 29, 1990, 104 Stat. 4805.)

CHAPTER 23—CONTRACTS

- Sec. 431. Contracts by Member of Congress.
- 432. Officer or employee contracting with Member of Congress.
- 433. Exemptions with respect to certain contracts.
- [434. Repealed.]
- 435. Contracts in excess of specific appropriation.
- 436. Convict labor contracts.
- [437. Repealed.]
- 438. Indian contracts for services generally.¹
- 439. Indian enrollment contracts.¹
- 440. Mail contracts.
- 441. Postal supply contracts.
- 442. Printing contracts.
- 443. War contracts.

AMENDMENTS

1996—Pub. L. 104-178, §1(b), Aug. 6, 1996, 110 Stat. 1565, struck out item 437 "Federal employees contracting or trading with Indians".

1994—Pub. L. 103-322, title XXXIII, §330010(13), Sept. 13, 1994, 108 Stat. 2144, struck out extraneous period after "Indians" in item 437.

1990—Pub. L. 101-647, title XXXV, §3512, Nov. 29, 1990, 104 Stat. 4922, struck out item 434 "Interested persons acting as Government agents" and substituted "Federal employees contracting or trading with Indians." for "Indian contracts for goods and supplies" in item 437.

1951—Act Oct. 31, 1951, ch. 655, §18, 65 Stat. 717, struck out "; exceptions" from item 431.

§ 431. Contracts by Member of Congress

Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertakes, executes, holds, or enjoys, in whole or in part, any contract or agreement, made or entered into in behalf of the United States or any agency thereof, by any officer or person authorized to make contracts on its behalf, shall be fined under this title.

All contracts or agreements made in violation of this section shall be void; and whenever any

¹ Section repealed by Pub. L. 106-568 without corresponding amendment of chapter analysis.