

HISTORICAL AND REVISION NOTES
1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|---|---|
| (a) | 28 U.S.C. 501. | [None]. |
| (b) | 28 U.S.C. 504(a). | [None]. |
| (c) | 28 U.S.C. 504(b) (less 2d sentence). | [None]. |

In subsection (c), the word “is” is substituted for “shall be”.

1948 ACT

Prior section 501.—Based on title 28, U.S.C., 1940 ed., § 481, sections 643 and 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, and section 11–1001, District of Columbia Code, 1940 ed. (R.S., § 767; June 26, 1876, ch. 147, §§ 1, 4, 19 Stat. 61, 62; Feb. 24, 1879, ch. 97, § 8, 20 Stat. 320; Mar. 3, 1881, ch. 144, § 7, 21 Stat. 507; Apr. 25, 1882, ch. 87, §§ 1, 3, 22 Stat. 47; July 20, 1882, ch. 312, § 3, 22 Stat. 172; Aug. 5, 1886, ch. 928, § 7, 24 Stat. 309; Feb. 22, 1889, ch. 180, § 21, 25 Stat. 682; July 3, 1890, ch. 656, § 16, 26 Stat. 217; July 10, 1890, ch. 664, § 16, 26 Stat. 225; Mar. 3, 1893, ch. 220, 27 Stat. 745; July 16, 1894, ch. 138, §§ 14, 16, 28 Stat. 110, 111; June 24, 1898, ch. 495, § 1, 30 Stat. 487; Apr. 12, 1900, ch. 191, § 34, 31 Stat. 85; Apr. 30, 1900, ch. 339, § 86, 31 Stat. 158; May 12, 1900, ch. 391, § 9, 31 Stat. 176; Jan. 22, 1901, ch. 105, §§ 4, 7, 31 Stat. 736, 737; Feb. 12, 1901, ch. 355, §§ 5, 7, 31 Stat. 782; Mar. 2, 1901, ch. 801, §§ 3, 5, 31 Stat. 881; Mar. 3, 1901, ch. 854, § 183, 31 Stat. 1220; Mar. 11, 1902, ch. 183, §§ 5, 6, 32 Stat. 66; June 30, 1902, ch. 1329, 32 Stat. 527; Mar. 2, 1905, ch. 1305, §§ 4, 6, 33 Stat. 824; Mar. 3, 1905, ch. 1427, §§ 13, 15, 19, 33 Stat. 995, 996; June 16, 1906, ch. 3335, § 13, 34 Stat. 275; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; Jan. 7, 1913, ch. 6, 37 Stat. 648; Mar. 3, 1915, ch. 100, §§ 3, 4, 38 Stat. 961; Mar. 2, 1917, ch. 145, § 41, 39 Stat. 965; Mar. 4, 1921, ch. 161, § 1, 41 Stat. 1412; July 9, 1921, ch. 42, § 313, 42 Stat. 119; May 28, 1926, ch. 414, § 2(b), 44 Stat. 672; Apr. 21, 1928, ch. 393, 45 Stat. 437; Mar. 26, 1928, ch. 51, § 2, 52 Stat. 118).

Section consolidates section 481 of title 28, U.S.C., 1940 ed., and section 11–1001 of the District of Columbia Code, 1940 ed., with parts of sections 643 and 863 of title 48, U.S.C., 1940 ed., relating to appointment of United States attorneys.

The term “United States attorney” was adopted in this section for “attorney for the United States.” Since the decision of the Supreme Court of the United States in *In re Neagle*, 1890 (10 S. Ct. 658, 135 U.S. 1, 34, L. Ed. 55) where the terms “attorneys of the United States” and “district attorneys” were used interchangeably, Congress has also designated such officers as either “United States attorneys” or as “district attorneys.” See Acts of Feb. 22, 1886, ch. 928, § 7, 24 Stat. 309; July 3, 1890, ch. 656, § 16, 26 Stat. 217; July 10, 1890, ch. 664, § 16, 26 Stat. 225, and Acts of July 20, 1882, ch. 312, § 3, 22 Stat. 172; Mar. 3, 1915, ch. 100, § 3, 38 Stat. 961; May 28, 1926, ch. 414, § 2(b), 44 Stat. 672.

At present, such officers are invariably designated as “United States attorneys” by Federal courts and the Department of Justice.

Words “The President may appoint, by and with the advice and consent of the Senate,” were inserted to conform section with the Constitution. See article II, section 2, clause 2.

Words “including the District of Columbia” were omitted, because the District is made a judicial district by section 88 of this title. District of Columbia Code, 1940 ed., § 11–1001, provided for appointment of an “attorney of the United States for the District” by the President, subject to Senate confirmation.

Words “learned in the law” were omitted as unnecessary. Such requirement is not made of United States judges and no reason appears to make a distinction respecting United States attorneys.

Parts of section 863 of title 48, U.S.C., 1940 ed., remain in said title 48. For remainder thereof, see Distribution Table. Other provisions of section 643 of such title are

incorporated in sections 133, 504 [now 541 and 544], and 541 [see 561] of this title.

Changes were made in phraseology.

[The Historical and Revision Notes for former section 504, from which this section is partially derived, is set out under section 544 of this title.]

PRIOR PROVISIONS

A prior section 541, acts June 25, 1948, ch. 646, 62 Stat. 910; Mar. 18, 1959, Pub. L. 86–3, § 11(c), (d), 73 Stat. 9, related to appointment, residence and tenure of marshals, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 561 of this title by section 4(c) of Pub. L. 89–554.

§ 542. Assistant United States attorneys

(a) The Attorney General may appoint one or more assistant United States attorneys in any district when the public interest so requires.

(b) Each assistant United States attorney is subject to removal by the Attorney General.

(Added Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 618.)

HISTORICAL AND REVISION NOTES
1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|--|---|
| (a) | 28 U.S.C. 502. | [None]. |
| (b) | 28 U.S.C. 504(b) (2d sentence, as applicable to assistant United States attorneys). | [None]. |

In subsection (b), the word “is” is substituted for “shall be”.

1948 ACT

Prior section 502.—Based on title 28, U.S.C., 1940 ed., §§ 483, 594 (May 28, 1896, ch. 252, § 8, 29 Stat. 181; July 19, 1919, ch. 24, § 1, 41 Stat. 209; Mar. 4, 1923, ch. 295, 42 Stat. 1560; June 25, 1936, ch. 804, 49 Stat. 1921).

Section consolidates sections 483 and 594 of title 28, U.S.C., 1940 ed., relating to appointment of assistant United States attorneys.

Words “United States attorneys” were substituted for “district attorneys.” (See reviser’s note under section 501 [now 541] of this title.)

The exception of Alaska from the operation of such section 483 was omitted as covered by section 109 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, authorizing appointment of assistant United States attorneys in Alaska.

Reference in such section 483 to “District of Columbia” was omitted. (See reviser’s note under section 501 [now 541] of this title.)

The provisions of sections 483 and 594 of title 28, U.S.C., 1940 ed., requiring the judges and United States attorneys to certify or evidence in writing the necessity for assistant United States attorneys in their respective districts, and specifying that such opinion of the judge shall state to the Attorney General the facts as distinguished from conclusions, showing the necessity therefor, were omitted. The Attorney General, as chief law enforcement officer, is in a better position to determine such necessity.

The salary provisions of such section 594 were omitted as covered by section 508 [now 548] of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 542, act June 25, 1948, ch. 646, 62 Stat. 911, related to appointment and tenure of deputies and assistants for United States marshals, prior to repeal by Pub. L. 89–554, § 8(a), and reenactment in section 562 of this title by section 4(c) of Pub. L. 89–554.

§ 543. Special attorneys

(a) The Attorney General may appoint attorneys to assist United States attorneys when the public interest so requires.

(b) Each attorney appointed under this section is subject to removal by the Attorney General.

(Added Pub. L. 89-554, §4(c), Sept. 6, 1966, 80 Stat. 618.)

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1966 ACT

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
|-------------------|---|---|
| (a) | 28 U.S.C. 503. 5 U.S.C. 298. | [None]. July 28, 1916, ch. 261, §1 (6th par. on p. 413), 39 Stat. 413. |
| (b) | 28 U.S.C. 504(b) (2d sentence, less applicability to assistant United States attorneys). | [None]. |

The text of former section 298 of title 5 is omitted as unnecessary. The position so authorized has not been filled in recent years, and the authority is preserved by this section and revised section 3101 of title 5, United States Code.

In subsection (b), the word “is” is substituted for “shall be”.

1948 ACT

Prior section 503.—Based on section 312 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees (R.S. §363).

Other provisions of section 312 of title 5, U.S.C., 1940 ed., are incorporated in sections 507 [now 509 and 547] and 508 [now 548] of this title.

Changes were made in phraseology.

PRIOR PROVISIONS

A prior section 543, act June 25, 1948, ch. 646, 62 Stat. 911, related to oath of office for United States Marshals, prior to repeal by Pub. L. 89-554, §8(a), and reenactment in section 563 of this title by section 4(c) of Pub. L. 89-554.

§ 544. Oath of office

Each United States attorney, assistant United States attorney, and attorney appointed under section 543 of this title, before taking office, shall take an oath to execute faithfully his duties.

(Added Pub. L. 89-554, §4(c), Sept. 6, 1966, 80 Stat. 618.)

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|-------------------|-------------------|---|
| | 28 U.S.C. 504(c). | [None]. |

1948 ACT

Prior section 504.—Based on section 315 of title 5, U.S.C., 1940 ed., Executive Departments and Government Officers and Employees, title 28, U.S.C., 1940 ed., §482, and sections 643 and 863 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions (R.S. §§366, 769; June 24, 1898, ch. 495, §1, 30 Stat. 487; Apr. 12, 1900, ch. 191, §34, 31 Stat. 85; Apr. 30, 1900, ch. 339, §86, 31 Stat. 158; Mar. 3, 1909, ch. 269, §1, 35 Stat. 838; Jan. 7, 1913, ch. 6, 37 Stat. 648; Mar. 2, 1917, ch. 145, §41, 39 Stat. 965; Mar. 4, 1921, ch. 161, §1, 41 Stat. 1412; July 9, 1921, ch. 42, §313, 42 Stat. 119; Feb. 12, 1925, ch. 220, 43 Stat. 890; Apr. 17,

1930, ch. 174, 46 Stat. 170; Mar. 26, 1938, ch. 51, §2, 52 Stat. 118).

Section consolidates parts of sections 315 of title 5, U.S.C., 1940 ed., and 643 and 863 of title 48, both U.S.C., 1940 ed., with section 482 of title 28, U.S.C., 1940 ed. It is recommended that said section 315 be amended so as to omit those provisions relating to special attorneys to assist “district attorneys” which were used as part of the basis for this section, as other parts of said section 315, relating to special assistants to the Attorney General, and to foreign counsel, are to remain in title 5.

Words “United States attorney” were substituted for district attorney, and reference to District of Columbia was omitted. (See reviser’s note under section 501 [now 541] of this title.)

Reference to the territories in said section 482, was also omitted as covered by provisions of title 48, U.S.C., 1940 ed., Territories and Insular Possessions. See sections 109 and 112 of such title applicable to United States attorney in Alaska, and 1353 applicable in the Canal Zone, and 1405y applicable in the Virgin Islands.

The provision as to the tenure of the assistant United States attorneys and special attorneys is new. Existing law contains no provision as to tenure or removal of such officials. While the Supreme Court has held that the power of removal of executive officials is incident to the power of appointment, this section expressly provides for removal. See *Meyers v. United States*, 1926 47 S.Ct. 21, 272 U.S. 52, 71 L.Ed. 160).

Said section 315 contained a provision that special attorneys appointed to assist United States attorneys should take the same oath required of the latter. This section was extended to assistant United States attorneys, respecting whom no provision existed as to oaths.

A portion of section 863 of title 48, U.S.C., 1940 ed., is retained in said title 48. For remainder of said section 863, see Distribution Table. Other provisions of section 643 of such title are incorporated in sections 133, 501 [now 541], and 541 [see 561] of this title.

Other changes were made in phraseology.

PRIOR PROVISIONS

A prior section 544, acts June 25, 1948, ch. 646, 62 Stat. 911; Sept. 2, 1958, Pub. L. 85-856, 72 Stat. 1104, related to bonds of United States marshals, prior to repeal by Pub. L. 89-554, §8(a), and reenactment in section 564 of this title by section 4(c) of Pub. L. 89-554.

§ 545. Residence

(a) Each United States attorney shall reside in the district for which he is appointed, except that these officers of the District of Columbia, the Southern District of New York, and the Eastern District of New York may reside within 20 miles thereof. Each assistant United States attorney shall reside in the district for which he or she is appointed or within 25 miles thereof. The provisions of this subsection shall not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. Pursuant to an order from the Attorney General or his designee, a United States attorney or an assistant United States attorney may be assigned dual or additional responsibilities that exempt such officer from the residency requirement in this subsection for a specific period as established by the order and subject to renewal.

(b) The Attorney General may determine the official stations of United States attorneys and assistant United States attorneys within the districts for which they are appointed.

(Added Pub. L. 89-554, §4(c), Sept. 6, 1966, 80 Stat. 618; amended Pub. L. 95-530, §1, Oct. 27, 1978, 92