

UNIFORM ACT TO SECURE THE ATTENDANCE OF
WITNESSES FROM WITHOUT A STATE IN
CRIMINAL PROCEEDINGS

(As Adopted by the Conference in 1936)

EXPLANATORY NOTE

The National Conference of Commissioners on Uniform State Laws, at its annual meeting in Atlantic City in September, 1931, adopted the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Cases. The Act was thereafter approved by the American Bar Association.

During the preceding four years, various drafts of an act on this subject were before the Conference for consideration. During the same period the American Law Institute prepared a tentative draft of a chapter on this same subject, as a part of its "Code of Criminal Procedure." Through conferences of committees representing the Conference and the Institute, a draft of an act was agreed upon. This draft was the one approved by the Conference, and will be found as a chapter in the American Law Institute's "Code of Criminal Procedure."

At its annual meeting in Boston in August, 1936, the Conference approved two significant changes of substance and several minor changes of form in this Uniform Act. The Uniform Act as originally adopted had been subject to criticism on the ground that it provided for the compulsory attendance of witnesses only when a criminal action was pending. It was pointed out that occasionally the ability to secure a warrant for arrest or an indictment before a Grand Jury may depend upon the testimony of witnesses outside the state. Accordingly, the first important change adopted in 1936 extends the application of the act so as to provide for the possibility of securing the attendance of witnesses in connection with *Grand Jury proceedings* as well as in *criminal cases*.

The second major change approved by the Conference in 1936 was to provide that, when expedient, a witness may be arrested, held in custody, and delivered over to an officer of the requesting state.

This Act should be adopted by every state. Its adoption will facilitate the administration of the criminal law. Officers engaged in the enforcement of criminal laws have long contended that there should be some statutory authority for securing the attendance of a witness from without the state in which the criminal proceeding is pending.

It is worthy of note that The Interstate Commission on Crime, at its annual meeting in Boston, in August, 1936, approved this Uniform Act in the form in which it is here printed, and is cooperating with the Conference in attempting to secure its adoption in all of the states.

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CRIMINAL PROCEEDINGS

(This is a revision, approved and adopted in 1936 at the Forty-sixth Annual Conference held in Boston, Massachusetts, of the Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Cases.)

Be it enacted, etc. (Use the proper enacting clause for the state.)

1 SECTION 1. *Definitions.* "Witness" as used in this act shall
2 include a person whose testimony is desired in any proceeding
3 or investigation by a Grand Jury or in a Criminal Action,
4 Prosecution or Proceeding.

5 The word "State" shall include any Territory of the United
6 States and the District of Columbia.

7 The word "summons" shall include a subpoena, order or
8 other notice requiring the appearance of a witness.

1 SECTION 2. *Summoning Witness in this State to Testify in*
2 *Another State.* If a judge of a court of record in any state
3 which by its laws has made provision for commanding persons
4 within that state to attend and testify in this state certifies
5 under the seal of such court that there is a criminal prosecu-
6 tion pending in such court, or that a grand jury investigation
7 has commenced or is about to commence, that a person being
8 within this state is a material witness in such prosecution, or
9 grand jury investigation, and that his presence will be required
10 for a specified number of days, upon presentation of such
11 certificate to any judge of a court of record in the county in
12 which such person is, such judge shall fix a time and place for
13 a hearing, and shall make an order directing the witness to
14 appear at a time and place certain for the hearing.

15 If at a hearing the judge determines that the witness is
16 material and necessary, that it will not cause undue hardship

17 to the witness to be compelled to attend and testify in the
18 prosecution or a grand jury investigation in the other state,
19 and that the laws of the state in which the prosecution is pend-
20 ing, or grand jury investigation has commenced or is about to
21 commence, [and of any other state through which the witness
22 may be required to pass by ordinary course of travel], will
23 give to him protection from arrest and the service of civil and
24 criminal process, he shall issue a summons, with a copy of the
25 certificate attached, directing the witness to attend and testify
26 in the court where the prosecution is pending, or where a grand
27 jury investigation has commenced or is about to commence
28 at a time and place specified in the summons. In any such
29 hearing the certificate shall be *prima facie* evidence of all the
30 facts stated therein.

31 If said certificate recommends that the witness be taken
32 into immediate custody and delivered to an officer of the
33 requesting state to assure his attendance in the requesting
34 state, such judge may, in lieu of notification of the hearing,
35 direct that such witness be forthwith brought before him for
36 said hearing; and the judge at the hearing being satisfied of
37 the desirability of such custody and delivery, for which deter-
38 mination the certificate shall be *prima facie* proof of such desir-
39 ability may, in lieu of issuing subpoena or summons, order that
40 said witness be forthwith taken into custody and delivered to
41 an officer of the requesting state.

42 If the witness, who is summoned as above provided, after
43 being paid or tendered by some properly authorized person
44 the sum of 10 cents a mile for each mile by the ordinary
45 traveled route to and from the court where the prosecution
46 is pending and five dollars for each day, that he is required to
47 travel and attend as a witness, fails without good cause to
48 attend and testify as directed in the summons, he shall be
49 punished in the manner provided for the punishment of any
50 witness who disobeys a summons issued from a court of rec-
51 ord in this state.

1 SECTION 3. *Witness from Another State Summoned to Tes-*
2 *tify in This State.* If a person in any state, which by its laws

3 has made provision for commanding persons within its borders
4 to attend and testify in criminal prosecutions, or grand jury
5 investigations commenced or about to commence, in this state,
6 is a material witness in a prosecution pending in a court of
7 record in this state, or in a grand jury investigation which has
8 commenced or is about to commence, a judge of such court
9 may issue a certificate under the seal of the court stating these
10 facts and specifying the number of days the witness will be
11 required. Said certificate may include a recommendation that
12 the witness be taken into immediate custody and delivered to
13 an officer of this state to assure his attendance in this state.
14 This certificate shall be presented to a judge of a court of rec-
15 ord in the county in which the witness is found.

16 If the witness is summoned to attend and testify in this
17 state he shall be tendered the sum of 10 cents a mile for each
18 mile by the ordinary traveled route to and from the court
19 where the prosecution is pending and five dollars for each day
20 that he is required to travel and attend as a witness. A witness
21 who has appeared in accordance with the provisions of the
22 summons shall not be required to remain within this state a
23 longer period of time than the period mentioned in the cer-
24 tificate, unless otherwise ordered by the court. If such witness,
25 after coming into this state, fails without good cause to attend
26 and testify as directed in the summons, he shall be punished in
27 the manner provided for the punishment of any witness who
28 disobeys a summons issued from a court of record in this state.

1 SECTION 4. *Exemption from Arrest and Service of Process.*

2 If a person comes into this state in obedience to a summons
3 directing him to attend and testify in this state he shall not
4 while in this state pursuant to such summons be subject to
5 arrest or the service of process, civil or criminal, in connec-
6 tion with matters which arose before his entrance into this
7 state under the summons.

8 If a person passes through this state while going to another
9 state in obedience to a summons to attend and testify in that
10 state or while returning therefrom, he shall not while so pass-

11 ing through this state be subject to arrest or the service of
12 process, civil or criminal, in connection with matters which
13 arose before his entrance into this state under the summons.

1 SECTION 5. *Uniformity of Interpretation.* This act shall be
2 so interpreted and construed as to effectuate its general pur-
3 pose to make uniform the law of the states which enact it.

1 SECTION 6. *Short Title.* This act may be cited as “Uniform
2 Act to Secure the Attendance of Witnesses from Without a
3 State in Criminal Proceedings.”

1 SECTION 7. *Repeal.* All acts or parts of acts inconsistent
2 with this act are hereby repealed.

1 SECTION 8. *Constitutionality.* If any provision of this act
2 or the application thereof to any person or circumstances is held
3 invalid, such invalidity shall not affect other provisions or
4 applications of the act which can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this act are declared to be severable.

1 SECTION 9. *Time of Taking Effect.* This act shall take
2 effect.....