

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

drafted by the

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ON UNIFORM STATE LAWS

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THE INTERSTATE COMMISSION ON CRIME

With Explanatory Statement

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Commissioners on Uniform State Laws and by the Interstate Commission on Crime

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The Commissioners who acted for the National Conference of Commissioners on Uniform State Laws in preparing the original draft and the revision of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings were:

ALEXANDER ARMSTRONG, Baltimore, Maryland.,
FRANK M. CLEVINGER, Wilmington, Ohio,
CHARLES M. DUTCHER, Iowa City, Iowa,
WILLIAM M. HARGEST, Harrisburg, Pennsylvania,
OLIVER A. HARKER, Urbana, Illinois,
CHARLES R. HOLLINGSWORTH, Ogden, Utah,
JESSE A. MILLER, Des Moines, Iowa,
WILLIAM C. RAMSEY, Omaha, Nebraska,
WILLIAM A. SCHNADER, Philadelphia, Pennsylvania,
A. W. SHANDS, Cleveland, Mississippi.

ROBERT S. STEVENS, Ithaca, New York, *Chairman*,
JOHN P. DEERING, Saco, Maine,
J. PURDON WRIGHT, Baltimore, Maryland,
ALBERT J. HARNO, Urbana, Illinois, *Chairman*,
Uniform Torts and Criminal Law Acts Section

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602
312/450-6600
www.uniformlaws.org

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

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.

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

(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 a State in Criminal Cases.)

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

SECTION 1. DEFINITIONS. “Witness” as used in this act shall include a person whose testimony is desired in any proceeding or investigation by a Grand Jury or in a Criminal Action, Prosecution or Proceeding.

The word “State” shall include any Territory of the United States and the District of Columbia.

The word “summons” shall include a subpoena, order or other notice requiring the appearance of a witness.

SECTION 2. SUMMONING WITNESS IN THIS STATE TO TESTIFY IN ANOTHER STATE. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution

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

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be *prima facie* proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

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

**SECTION 3. WITNESS FROM ANOTHER STATE SUMMONED TO TESTIFY
IN THIS STATE.** If a person in any state, which by its laws has made provisions for

commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

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

SECTION 4. EXEMPTION FROM ARREST AND SERVICE OF PROCESS. If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a

summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

SECTION 5. UNIFORMITY OF INTERPRETATION. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

SECTION 6. SHORT TITLE. This act may be cited as “Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.”

SECTION 7. REPEAL. All acts or parts of acts inconsistent with this act are hereby repealed.

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

SECTION 9. TIME OF TAKING EFFECT. This act shall take effect. . . .