

IC 35-37-5

Chapter 5. Uniform Act to Secure the Attendance of Witnesses From Outside the State in Criminal Proceedings

IC 35-37-5-1

Definitions

Sec. 1. As used in this chapter:

"State" includes any territory of the United States and the District of Columbia.

"Subpoena" includes a summons in any state where a summons is used in lieu of a subpoena.

"Witness" 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.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-2

Subpoena; issuance; service; proof of service; fees; contempt of court

Sec. 2. (a) At the request of the state or a defendant, subpoenas for attendance at a hearing or trial shall be issued by the clerk of the court of the county in which the hearing or trial is to be held. A subpoena may be served at any place within the state. When permitted by the laws of the United States, this or another state, or foreign country, the court upon proper application and cause shown may authorize the service of a subpoena outside the state in accordance with such law.

(b) Every subpoena shall:

- (1) be issued by the clerk under the seal of the court;
- (2) state the name of the court and the title of the action;
- (3) command each person to whom it is directed to attend and give testimony at a specified time and place; and
- (4) be signed by the clerk.

The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it or his attorney, who shall fill it in before service.

(c) A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein. The court, upon motion made at or before the time specified in the subpoena for compliance, may:

- (1) quash or modify the subpoena if it is unreasonable and oppressive; or
- (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, documents, or tangible things.

(d) A subpoena may be served by any person. Service of a subpoena upon a person shall be made in the same manner as provided in the Indiana Rules of Trial Procedure.

(e) When a subpoena is served by the sheriff or his deputy, his

return shall be proof of service. When served by any other person, the service must be shown by affidavit. No fees or costs for the service of a subpoena shall be collected or charged as costs except when service is made by the sheriff or his deputy.

(f) Fees need not be first paid or tendered in order to compel the attendance of witnesses in a criminal proceeding.

(g) Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of:

- (1) the court from which the subpoena is issued; or
- (2) the court of the county where the witness was required to appear or act.

When duly subpoenaed, the attendance of all witnesses may be enforced by attachment.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-3

Subpoena; persons imprisoned or institutionalized within this state

Sec. 3. (a) When the testimony of a person who is imprisoned or institutionalized within this state is necessary in any criminal proceeding, the subpoena shall be delivered or mailed to the official in charge of the institution.

(b) The official in charge of the institution shall bring the witness named in the subpoena before the court at the time and place specified and hold him until he is discharged by the court. When so discharged, the witness shall be returned to the custody of such official and returned to the institution. The official in charge of the institution may request from the court issuing the subpoena such assistance as he deems proper for the safe transportation of the witness.

(c) When such witness is in attendance upon any court, he may be placed, for safe-keeping, in the jail of the county or any other suitable place pursuant to an order of the court. The county in which the proceeding is pending shall pay the actual and necessary expense of producing, keeping, and returning such witness.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-4

Summoning witness in this state to testify in another state

Sec. 4. (a) If a judge of a court of record in any state which has made provision for the commanding of persons within that state to attend and testify in this state certifies under the seal of the court that:

- (1) there is a criminal prosecution pending in the court, or that a grand jury investigation has commenced or is about to commence;
- (2) a person being within this state is a material witness in the prosecution or grand jury investigation; and
- (3) the person's presence will be required for a specified number of days;

upon presentation of the certificate to a judge of a court of record

with jurisdiction to try felony cases in the county in which the person is located, the 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.

(b) If at the hearing the judge determines that:

- (1) the witness is material and necessary;
- (2) 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
- (3) the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to the person protection from arrest, and the service of civil and criminal process;

the judge shall issue a subpoena, 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 subpoena. In any hearing the certificate is prima facie evidence of all the facts stated in it.

(c) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure the attendance of the witness in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be immediately brought before the judge for the hearing. If the judge is satisfied of the desirability of the custody and delivery, the judge may, in lieu of issuing a subpoena, order that the witness be immediately taken into custody and delivered to an officer of the requesting state. For this determination, the certificate is prima facie proof of such desirability.

(d) If a witness subpoenaed as provided in this section is paid or tendered a sum for expenses and fails without good cause to attend and testify as directed in the subpoena, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a subpoena issued from a court of record in this state.

(e) The amount of the payment for expenses under subsection (d) of this section and section 4(b) of this chapter is set out in IC 33-37-10-2.

As added by P.L.311-1983, SEC.2. Amended by P.L.171-1984, SEC.78; P.L.192-1986, SEC.38; P.L.305-1987, SEC.33; P.L.98-2004, SEC.148.

IC 35-37-5-5

Witness from another state summoned to testify in this state

Sec. 5. (a) If a person in any state that has made provision for commanding persons within its borders to attend and testify in criminal prosecutions in this state 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 in this state, a judge of the 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. This certificate shall be presented to a judge of a court of record in the county of the state in which the witness is found.

(b) If the witness is summoned to attend and testify in this state, the witness shall be tendered a sum for expenses equal to the amount provided under IC 33-37-10-2. The fees shall be a proper charge upon the county in which the criminal prosecution or grand jury investigation is pending.

(c) A witness who has appeared in accordance with the provisions of the subpoena shall not be required to remain within this state for a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court.

(d) If the witness fails without good cause to attend and testify as directed in the subpoena, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a subpoena issued from a court of record in this state.

As added by P.L.311-1983, SEC.2. Amended by P.L.171-1984, SEC.79; P.L.192-1986, SEC.39; P.L.305-1987, SEC.34; P.L.98-2004, SEC.149.

IC 35-37-5-6

Summoning prisoners in this state to testify in another state; prisoner from another state summoned to testify in this state

Sec. 6. (a) If a judge of a court of record in any other state, which by its laws has made provision for commanding a prisoner within that state to attend and testify in this state, certifies under the seal of the court that:

- (1) there is a criminal prosecution pending in such court or that a grand jury investigation has commenced;
- (2) a person confined by the department of correction (other than a person awaiting execution of a sentence of death) is a material witness in such prosecution or investigation; and
- (3) his presence is required for a specified number of days;

a judge of a court with jurisdiction to try felony cases in the county where the person is confined, after notice to the attorney general, shall fix a time and place for a hearing and shall order the person having custody of the prisoner to produce him at the hearing.

(b) If at such hearing the judge determines that the prisoner is a material and necessary witness in the requesting state, the judge shall issue an order directing that the prisoner attend the court where the prosecution or investigation is pending, upon such terms and conditions as the judge prescribes, including:

- (1) provision for the return of the prisoner at the conclusion of his testimony;
- (2) proper safeguards on his custody; and
- (3) proper financial reimbursement or other payment by the demanding jurisdiction for all expenses incurred in the production and return of the prisoner.

(c) The attorney general is authorized to enter into agreements

with authorities of the demanding jurisdiction to insure proper compliance with the order of the court.

(d) If:

(1) a criminal action is pending in a court of record of this state by reason of the filing of an indictment or affidavit or by reason of the commencement of a grand jury proceeding or investigation;

(2) there is reasonable cause to believe that a person confined in a correctional institution or prison of another state (other than a person awaiting execution of a sentence of death or one confined as mentally ill) possesses information material to such criminal action;

(3) the attendance of such person as a witness in such action is desired by a party; and

(4) the state in which such person is confined possesses a statute equivalent to this section;

a judge of the court in which such action is pending may issue a certificate certifying all such facts and that the attendance of such person as a witness in such court is required for a specified number of days. Such a certificate may be issued upon application of either the state or defendant demonstrating all the facts specified in this section.

(e) Upon issuing such a certificate, the court may deliver it to a court of such other state which, pursuant to the laws thereof, is authorized to undertake legal action for the delivery of such prisoners to this state as witnesses.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-7

Federal prisoner summoned to testify in this state

Sec. 7. When:

(1) a criminal action is pending in a court of record of this state by reason of an indictment or affidavit, or by reason of the commencement of a grand jury proceeding or investigation;

(2) there is reasonable cause to believe that a person confined in a federal prison or other federal custody, either within or outside this state, possesses information material to such criminal action; and

(3) the attendance of such person as a witness in such action is desired by a party;

the court may issue a certificate, known as a writ of habeas corpus ad testificandum, addressed to the attorney general of the United States, certifying all such facts and requesting the attorney general of the United States to cause the attendance of such person as a witness in such court for a specified number of days. Such a certificate may be issued upon application of either the state or a defendant demonstrating all facts specified in subdivision (1). Upon issuing such a certificate, the court may deliver it, or cause or authorize it to be delivered, to the attorney general of the United States or to his representative authorized to entertain the request.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-8

Exemption from arrest or service of process

Sec. 8. If a person comes into this state in obedience to a subpoena directing him to attend and testify in a criminal prosecution in this or any other state, he shall not while in this state pursuant to such subpoena 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 subpoena.

As added by P.L.311-1983, SEC.2.

IC 35-37-5-9

Uniformity of construction

Sec. 9. This chapter shall be construed so as to effectuate its general purpose which is to make uniform the law of the states that enact it.

As added by P.L.311-1983, SEC.2.