

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 30
WITNESSES IN CRIMINAL PROCEEDINGS

19-3001. RULES FOR DETERMINING COMPETENCY. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

[(19-3001) R.S., R.C., & C.L., sec. 8141; C.S., sec. 9129; I.C.A., sec. 19-2901.]

19-3002. HUSBAND AND WIFE AS WITNESSES. Neither husband nor wife are competent witnesses for or against each other in a criminal action or proceeding to which one or both are parties, except:

1. With the consent of both, or
2. In cases of criminal violence upon one by the other; or acts of physical injury upon a child of either the husband or the wife where the injury has been caused as a result of physical abuse or neglect by one or both of the parents; or to acts or attempted acts of lewd conduct with a minor child; or
3. In cases of desertion or nonsupport of wife or child by the husband.

[(19-3002) R.S. & R.C., sec. 8142; compiled and reen. C.L., sec. 8142; C.S., sec. 9130; I.C.A., sec. 19-2902; am. 1979, ch. 152, sec. 1, p. 468.]

19-3003. DEFENDANT NOT OBLIGED TO TESTIFY. A defendant in a criminal action or proceeding to which he is a party, is not, without his consent, a competent witness for or against himself. His neglect or refusal to give such consent shall not in any manner prejudice him nor be used against him on the trial or proceeding.

[(19-3003) Cr. Prac. 1864, sec. 12, p. 214; R.S., R.C., & C.L., sec. 8143; C.S., sec. 9131; I.C.A., sec. 19-2903.]

19-3004. COMPELLING ATTENDANCE OF WITNESS -- SUBPOENA AND HOW ISSUED. The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by:

1. A magistrate before whom an information is laid, for witnesses in the state, either on behalf of the people or of the defendant.
2. The prosecuting attorney, for witnesses in the state in support of the prosecution, or for such other witnesses as the grand jury, upon an investigation pending before them, may direct.
3. The prosecuting attorney, for witnesses in the state in support of an indictment or information, to appear before the court in which it is to be tried.
4. The clerk of the court in which an indictment or information is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpoenas, subscribed by him as clerk, for witnesses in the state or without the state as provided in section [19-3005](#), as the defendant may require.

[(19-3004) Cr. Prac. 1864, secs. 534, 538, p. 278; R.S., R.C., & C.L., sec. 8148; C.S., sec. 9132; I.C.A., sec. 19-2904; am. 1935, ch. 10, sec. 1, p. 24.]

19-3004A. ADMINISTRATIVE SUBPOENA -- ELECTRONIC COMMUNICATION AND REMOTE COMPUTING SERVICES. (1) A provider of an electronic communication service or remote computing service that is transacting or has transacted any business in the state shall disclose the following to a prosecuting attorney or the attorney general pursuant to an administrative subpoena issued by the prosecuting attorney or attorney general:

(a) Records and information in its possession containing the name, address, local and long distance telephone connection records, or records of session times and durations, length of service, including the start date; and

(b) Records and information in its possession containing the types of service utilized, telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

(c) Records and information in its possession relating to the means and source of payment for such service pertaining to a subscriber to or customer of such service.

The provider of an electronic communication service or remote computing service shall deliver the records to the prosecuting attorney or attorney general within fourteen (14) days of receipt of the subpoena.

(2) For the purpose of this section, the following definitions shall apply:

(a) "Electronic communication service" has the same meaning as provided in section [18-6701](#) (13), Idaho Code.

(b) "Remote computing service" means the provision to the public of computer storage or processing service by means of an electronic communications system as defined in section [18-6701](#) (12), Idaho Code.

(3) In order to obtain the records or information, the prosecuting attorney or attorney general shall certify on the face of the subpoena that there is reason to believe that the records or information being sought are relevant to a legitimate law enforcement investigation concerning a violation of section [18-1505B](#), [18-1506](#), [18-1506A](#), [18-1507](#), [18-1508](#), [18-1508A](#), [18-1509](#), [18-1509A](#), [18-1515](#), [18-2202](#), or [18-6605](#), Idaho Code.

(4) No subpoena issued pursuant to this section shall demand records that disclose the content of electronic communications or subscriber account records disclosing internet locations which have been accessed including, but not limited to, websites, chat channels and news groups, but excluding servers used to initially access the internet. No recipient of a subpoena issued pursuant to this section shall provide any such content or records accessed, in response to the subpoena.

(5) On a motion made by the electronic communication service or remote computing service provider prior to the time for appearance or the production of documents under the subpoena issued pursuant to this section, a court of competent jurisdiction may quash or modify the administrative subpoena if the provider establishes that the records or other information requested are unusually voluminous in nature or if compliance with the subpoena would otherwise cause an undue burden on the service provider.

(6) No cause of action shall lie in any court against an electronic communication service or remote computing service provider, its officers,

employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of an administrative subpoena issued under this section.

(7) A person who is subpoenaed under this section and who fails to appear or produce materials as required by the subpoena, or who refuses to be sworn or give testimony, may be found to be in contempt of court. Proceedings to hold a person in contempt under this subsection may be brought in the county where the subpoena was issued.

(8) Nothing in this section shall limit the right of a prosecuting attorney or the attorney general to otherwise obtain records or information from a provider of electronic communication service or remote computing service pursuant to a search warrant, a court order or a grand jury or trial subpoena.

[19-3004A, added 2009, ch. 61, sec. 1, p. 166; am. 2012, ch. 269, sec. 5, p. 755; am. 2022, ch. 124, sec. 22, p. 456.]

19-3005. UNIFORM ACT TO SECURE ATTENDANCE OF WITNESSES. (1) Subpoenaing a 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 provisions for commanding persons within that state to attend and testify in criminal hearings or prosecutions in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court that a person being within this state is a material witness in such prosecution, 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 notify the witness of such time and place.

If at the 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 in the other state, and that the laws of the state in which the prosecution is pending 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 subpoena, with a copy of the certificate attached, directing the witness to attend and testify in the court where the hearing or prosecution is pending at a time and place specified in the subpoena.

If the witness, who is subpoenaed as above provided, after being tendered by some properly authorized person a prepaid, round trip airline ticket or, in the event that there is no regularly scheduled airline service available, a prepaid round trip ticket on any common carrier providing passenger transportation services to and from the court where the hearing or prosecution is pending and five dollars (\$5.00) 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 subpoena, he may 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.

(2) Witness From Another State Subpoenaed 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 hearings or prosecutions in this state, is a material witness in a hearing or prosecution pending in a court of record in this state, 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 at such hearing or prosecution. 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 subpoenaed to attend and testify in the criminal hearing or prosecution in this state he shall be tendered the sum of fifteen cents (15¢) a mile for each mile by the ordinarily traveled route, one (1) way, to and from the court where the hearing or prosecution is pending and five dollars (\$5.00) for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the subpoena shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless such extended period of time is obtained by the written consent of such witness.

(3) Have Exemption From Arrest and Service of Process. If a person comes into this state in obedience to a subpoena directing him to attend and testify in a criminal hearing or prosecution in this state, he will not while in this state, pursuant to such subpoena, be subjected to arrest or the service of process, civil or criminal, in connection with any matter which arose before his entrance into this state under such subpoena.

If a person passes through this state while going to another state in obedience to a subpoena to attend and testify in a criminal hearing or prosecution in that state or while returning therefrom, he shall not while so passing through this state be subjected to arrest or the service of process, civil or criminal, in connection with any matter which arose before his entrance into this state under such subpoena.

(4) Uniformity of Interpretation. This section shall be interpreted and construed so as to effectuate its general purpose to make uniform the law of the states which enact it.

(5) Short Title. This section may be cited as "Uniform Act to Secure the Attendance of Witnesses in Criminal Cases."

[(19-3005) I.C.A., sec. 19-2904-A as added by 1935, ch. 10, sec. 2, p. 24; am. 1990, ch. 386, sec. 1, p. 1063.]

19-3006. FORM OF SUBPOENA. A subpoena authorized by section [19-3004](#), Idaho Code, must be substantially in the following form:

The state of Idaho to A.B.:

You are commanded to appear before C.D., a [district] [magistrate] judge, in.... county (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the state of Idaho against E.F.

Given under my hand this.... day of....,.....

G.H., [District] [Magistrate] Judge, (or "J.K., Prosecuting Attorney," or

"By order of the court, L.M., Clerk," or as the case may be).

If books, papers or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers or documents required).

[(19-3006) Cr. Prac. 1864, secs. 539, 540, p. 279; R.S., R.C., & C.L., sec. 8149; C.S., sec. 9133; I.C.A., sec. 19-2905; am. 2002, ch. 32, sec. 6, p. 49; am. 2012, ch. 20, sec. 9, p. 68.]

19-3007. SERVICE OF SUBPOENA. A subpoena may be served by any person, but a peace officer must serve in his county any subpoena delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally and informing him of its contents.

[(19-3007) Cr. Prac. 1864, secs. 541, 542, p. 279; R.S., R.C., & C.L., sec. 8150; C.S., sec. 9134; I.C.A., sec. 19-2906.]

19-3007A. SERVICE OF SUBPOENA BY MAIL OR MESSENGER. (1) Notwithstanding the provisions of section [19-3007](#), Idaho Code, a subpoena may be delivered by mail or messenger. Service shall be effected when the witness acknowledges receipt of the subpoena to the sender by telephone, by mail, or in person, and identifies himself or herself by reference to his date of birth and his driver's license number or social security number. The sender shall make a written notation of the identifying information obtained during any acknowledgement by telephone or in person. A subpoena issued and acknowledged pursuant to this section shall have the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt, and the subpoena may so state; provided, that a warrant of arrest or a body attachment may not be issued based upon a failure to appear after being subpoenaed pursuant to this section.

(2) A party requesting a continuance based upon the failure of a witness to appear in court at the time and place required for his appearance or testimony pursuant to a subpoena shall prove to the court that the party has complied with the provisions of this section. Such a continuance shall only be granted for a period of time which would allow personal service of the subpoena and a reasonable time for the witness to appear before the court.

[19-3007A, added 1989, ch. 267, sec. 2, p. 653.]

19-3008. FEES AND MILEAGE OF WITNESSES. When a person shall attend before a grand jury, or the district court, as a witness, upon a subpoena, or pursuant to an undertaking, such person shall receive the same rate per mile as the state of Idaho pays for state employees pursuant to section [67-2008](#), Idaho Code, but no person can receive more than one (1) mileage under this section per day of attendance in court; such person shall also receive eight dollars (\$8.00) per day for each day's actual attendance as such witness and reasonable lodging expenses when approved in advance by the judge before whom the witness appears. Such mileage and per diem must be paid out of the county treasury of the county where such district court is held, upon the certificate of the clerk of said court: provided, however, that when a defendant in a criminal proceeding requires the attendance of more than five (5) witnesses in his behalf, before such witnesses shall be subpoenaed at the county's expense, or their fees and mileage be a charge against the county, such defendant must make affidavit setting forth that they are witnesses whose evidence is material to his defense, and that he can not safely go to trial without them. In such case the court, or the judge thereof, at any time application is made therefor, shall order a subpoena to issue to such of said witnesses as the court, or the judge thereof, may deem material for the defendant, and the costs incurred by the process and the fees and mileage

of such witnesses shall be paid in the same manner that the costs and fees of other witnesses are paid.

[(19-3008) R.S., sec. 8151; am. 1893, p. 20, sec. 1; reen. 1899, p. 172, sec. 1; am. 1899, p. 367, sec. 1; reen. R.C., & C.L., sec. 8151; C.S., sec. 9135; I.C.A., sec. 19-2907; am. 1961, ch. 5, sec. 1, p. 7; am. 1982, ch. 213, sec. 3, p. 587; am. 1985, ch. 122, sec. 8, p. 303.]

19-3010. DISOBEDIENCE TO SUBPOENA. Disobedience to a subpoena, or a refusal to be sworn or to testify as a witness, may be punished by the court or magistrate as a contempt. A witness disobeying a subpoena issued on the part of the defendant, unless he show good cause for his nonattendance, is liable to the defendant in the sum of \$100, which may be recovered in a civil action.

[(19-3010) Cr. Prac. 1864, secs. 546, 548, pp. 279 and 280; R.S., R.C., & C.L., sec. 8153; C.S., sec. 9137; I.C.A., sec. 19-2909.]

19-3011. FORFEITURE OF UNDERTAKING OF WITNESS. When a witness has entered into an undertaking to appear, upon his failure to do so the undertaking is forfeited in the same manner as undertakings of bail.

[(19-3011) Cr. Prac. 1864, sec. 547, p. 280; R.S., R.C., & C.L., sec. 8154; C.S., sec. 9138; I.C.A., sec. 19-2910.]

19-3012. PRODUCTION OF IMPRISONED WITNESS -- PROCEDURE. When the testimony of a material witness for the people is required in a criminal action before a court of record of this state, and such witness is a prisoner in the state prison or in a county jail, an order for his temporary removal from such prison or jail, and for his production before such court, may be made by the court in which the action is pending, or by a judge thereof; but in case the prison or jail is out of the county in which the application is made, such order can only be made upon the affidavit of the prosecuting attorney or other person on behalf of the people showing that the testimony is material and necessary; and even then the granting of the order is in the discretion of the court or judge. The order must be executed by the sheriff of the county in which it is made, whose duty it is to bring the prisoner before the proper court, to safely keep him, and when he is no longer required as a witness, to return him to the prison or jail whence he was taken. The expense of executing such order must be paid by the county in which the order is made.

[(19-3012) R.S., R.C., & C.L., sec. 8155; C.S., sec. 9139; I.C.A., sec. 19-2911.]

19-3013. DEFINITIONS. As used in this act,

(a) "Witness" means a person who is confined in a penal institution in any state and whose testimony is desired in another state in any criminal proceeding or investigation by a grand jury or in any criminal action before a court.

(b) "Penal institutions" includes a jail, prison, penitentiary, house of correction, or other place of penal detention.

(c) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory of the United States.

[19-3013, added 1959, ch. 10, sec. 1, p. 25.]

19-3014. SUMMONING WITNESS IN THIS STATE TO TESTIFY IN ANOTHER STATE. A judge of a state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in this state, may certify (1) that there is a criminal proceeding or investigation, by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in this state may be a material witness in the proceeding, investigation or action, and (3) that his presence will be required during a specified time. Upon presentation of the certificate to any judge having jurisdiction over the person confined, and upon notice to the attorney general, the judge in this state shall fix a time and place for a hearing and shall make an order directed to the person having custody of the prisoner requiring that the prisoner be produced before him at the hearing.

[19-3014, added 1959, ch. 10, sec. 2, p. 25.]

19-3015. COURT ORDER. If at the hearing the judge determines (1) that the witness may be material and necessary, (2) that his attending and testifying are not adverse to the interests of this state or to the health or legal rights of the witness, (3) that the laws of the state in which he is requested to testify will give him protection from arrest and the service of civil and criminal process because of any act committed prior to his arrival in the state under the order, and (4) that as a practical matter the possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which he will be required to pass, the judge shall issue an order, with a copy of the certificate attached, (a) directing the witness to attend and testify, (b) directing the person having custody of the witness to produce him, in the court where the criminal action is pending, or where the grand jury investigation is pending, at a time and place specified in the order, and (c) prescribing such conditions as the judge shall determine.

[19-3015, added 1959, ch. 10, sec. 3, p. 25.]

19-3016. TERMS AND CONDITIONS. The order to the witness and to the person having custody of the witness shall provide for the return of the witness at the conclusion of his testimony, proper safeguards on his custody, and proper financial reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the witness, and may prescribe such other conditions as the judge thinks proper or necessary. The order shall not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

[19-3016, added 1959, ch. 10, sec. 4, p. 25.]

19-3017. EXCEPTIONS. This act does not apply to any person in this state confined as insane or mentally ill.

[19-3017, added 1959, ch. 10, sec. 5, p. 25.]

19-3018. PRISONER FROM ANOTHER STATE SUMMONED TO TESTIFY IN THIS STATE. If a person confined in a penal institution in any other state may be a material witness in a criminal action pending in a court of record or in a grand jury investigation in this state, a judge of the court may certify (1) that there is a criminal proceeding or investigation by a grand jury or a criminal action pending in the court, (2) that a person who is confined in a penal institution in the other state may be a material witness in a proceeding, investigation, or action, and (3) that his presence will be required during a specified time. The certificate will be presented to a judge of a court of record in the other state having jurisdiction over the prisoner confined, and a notice shall be given to the attorney general of the state in which the prisoner is confined.

[19-3018, added 1959, ch. 10, sec. 6, p. 25.]

19-3019. COMPLIANCE. The judge of the court in this state may enter an order directing compliance with the terms and conditions prescribed by the judge of the state in which the witness is confined.

[19-3019, added 1959, ch. 10, sec. 7, p. 25.]

19-3020. EXEMPTION FROM ARREST AND SERVICE OF PROCESS. If a witness from another state comes into or passes through this state under an order directing him to attend and testify in this or another state, he shall not while in this state pursuant to the order be subject to arrest or the service of process, civil or criminal, because of any act committed prior to his arrival in this state under the order.

[19-3020, added 1959, ch. 10, sec. 8, p. 25.]

19-3021. UNIFORMITY OF INTERPRETATION. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[19-3021, added 1959, ch. 10, sec. 9, p. 25.]

19-3022. SHORT TITLE. This act may be cited as the "Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act."

[19-3022, added 1959, ch. 10, sec. 10, p. 25.]

19-3023. CHILD SUMMONED AS WITNESS. (1) When a child is summoned as a witness in any hearing in any criminal matter, including any preliminary hearing, notwithstanding any other statutory provision, parents, a counselor, friend or other person having a supportive relationship with the child, or a facility dog, shall be allowed to remain in the courtroom at the witness stand with the child during the child's testimony unless in written findings made and entered, the court finds that the defendant's constitutional right to a fair trial will be unduly prejudiced.

(2) When a child is summoned as a witness in any hearing in a noncriminal matter that involves the abuse, neglect or abandonment of the child, including any preliminary hearing, notwithstanding any other statutory provision, a facility dog shall be allowed to remain in the courtroom at the witness stand with the child during the child's testimony.

(3) For purposes of this section, "facility dog" means a dog that is a graduate of an assistance dog organization that is a member of assistance dogs international or a similar internationally recognized organization whose main purpose is to grant accreditation to assistance dog organizations based on standards of excellence in all areas of assistance dog acquisition, training and placement.

[19-3023, added 1983, ch. 206, sec. 1, p. 560; am. 1989, ch. 48, sec. 1, p. 60; am. 2017, ch. 176, sec. 1, p. 407.]

19-3024. STATEMENTS BY CHILD. Statements made by a child under the age of ten (10) years describing any act of sexual abuse, physical abuse, or other criminal conduct committed with or upon the child, although not otherwise admissible by statute or court rule, are admissible in evidence after a proper foundation has been laid in accordance with the Idaho rules of evidence in any proceedings under the child protective act, [chapter 16, title 16](#), Idaho Code, or in any criminal proceedings in the courts of the state of Idaho if:

1. The court finds, in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statements provide sufficient indicia of reliability; and

(2) The child either:

(a) Testifies at the proceedings; or

(b) Is unavailable as a witness. A child is unavailable as a witness when the child is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity. Provided, that when the child is unavailable as a witness, such statements may be admitted only if there is corroborative evidence of the act.

Statements may not be admitted unless the proponent of the statements notifies the adverse party of his intention to offer the statements and the particulars of the statements sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statements.

[19-3024, added 1986, ch. 196, sec. 1, p. 494.]

19-3025. WITNESS PSYCHIATRIC, PSYCHOLOGICAL EXAMINATION. Except upon the agreement of the parties, the court shall not order a witness in a prosecution for any offense or a victim of any offense to submit to a psychiatric or psychological examination for the purpose of assessing the witness's or victim's credibility.

[19-3025, added 1989, ch. 304, sec. 1, p. 758.]