

**Prisoner/Material Witness Process**

May 21, 2024  
National Association of Extradition Officials  
59th Extradition Training Conference  
Jerry Schrottenboer, Assistant Appellate Attorney, Ingham County Prosecutor's Office

1

---

---

---

---

---

---

---

---

**Presentation Outline**

- A. Legal obligations—why bother
- B. Uniform Acts
- C. How it works
- D. Alternatives to the Uniform Acts

2

---

---

---

---

---

---

---

---

**A. Legal Obligations – Why We Do It**

- Jurisdictional limitations
- Sixth Amendment to the U.S. Constitution
  - Confrontation Clause and requesting state's hearsay rules—availability
  - Defendant's right to compel production of witnesses to testify on their behalf

3

---

---

---

---

---

---

---

---

### B. Uniform Acts

- Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings Act (“Uniform Act”)
  - All states, DC, and three of the five U.S. territories have adopted this Uniform Act
    - See handout for specific statutory citation
  - Reciprocity required
  - Most states, prosecutor in “**requesting state**” must show at a hearing:
    - (1) Witness material and necessary;
    - (2) No undue hardship; and
    - (3) Protection from civil and criminal process.

---

---

---

---

---

---

---

---

4

### Uniform Acts

- Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act (“Prisoners Act”)
  - Only 20 states adopted Prisoners Act in addition to Uniform Act
    - See handout for specific statutory citation
  - Reciprocity required – use other Act if either state has not passed this one
  - In most states, prosecutor in requesting state must show at a hearing:
    - (1) Witness “may be” material and necessary;
    - (2) Prisoner’s attendance not adverse to state or prisoner;
    - (3) Prisoner protected from civil and criminal process; and
    - (4) Must provide for return of prisoner, safeguards and reimbursement.
  - Not apply to either mentally ill or death-penalty inmates

---

---

---

---

---

---

---

---

5

### C. How it works:

- Process between Uniform Act and Prisoners Act very similar.
- **\*\*Start process as soon as possible\*\***
- Step 1 – Requesting state prosecutor reviews Uniform Act/ Prisoners Act in “**producing state**” to ensure all paperwork is in order.
  - Even better – *contact* producing state prosecutor!

---

---

---

---

---

---

---

---

6

How it works:

- Step 2 – Requesting state prosecutor prepares:
  - Motion/petition for certification (Form A); and
  - Affidavit (Form B):
    - Existence of investigation/criminal process;
    - Witness is **material and necessary**
    - Location where witness is located; and
    - Dates witness requested to testify.

---

---

---

---

---

---

---

---

7

How it works:

- Step 3 – Requesting state prosecutor files motion/petition with court for issuance of certification and summons.
- Step 4 – Court issues summons and certification under seal of court (Form C) finding:
  - Existence of investigation or criminal process;
  - Witness is material and necessary; and
  - Dates witness requested to testify.
  - *Some producing states also require following findings:*  
Not Cumulative, irrelevant, insubstantial, speculative

---

---

---

---

---

---

---

---

8

How it works:

- Step 5 – Requesting state prosecutor contacts producing state prosecutor.
- Step 6 – Requesting state prosecutor forwards to producing state prosecutor:
  - Court certification under court seal; and
  - Copy of criminal summons.
  - *Some states also require:*  
Affidavit supporting the motion/petition      Clerk's certificate of documents  
Warrant for fees and mileage expenses

---

---

---

---

---

---

---

---

9

How it works:

- Step 7 – Producing state prosecutor ensures all paperwork complies with state laws.
- Producing state prosecutor files petition (Form D), with requesting state documents attached as exhibits.
- Step 8 – Producing state prosecutor schedules a hearing with the witness present (see Form E).
  - Hearing is mandatory!

---

---

---

---

---

---

---

---

10

How it works:

- Step 9 – At hearing, producing state court determines, at minimum:
  - Reciprocity of state laws;
  - Witness is material and necessary;
  - No undue hardship to witness; and
  - Protection from civil and criminal process.
- Based on state law, may also determine:
  - (Prisoners Act only) Whether interests of the producing state adversely affected; or
  - Whether testimony merely cumulative; or
  - Whether witness is high-ranking government official.

---

---

---

---

---

---

---

---

11

How it works:

- Step 10 – Producing state court issues summons or order (Form F), with requesting state’s certification attached. Get two certified copies.
- Additional requirements under Prisoners Act:
  - Requesting state provides for prisoner’s return after testimony, payment of expenses and safeguards for custody.

---

---

---

---

---

---

---

---

12

How it works:

- Step 11 – Producing state serves **certified copy** of summons/order on prisoner (Form G) and takes prisoner into custody (if not already in custody).
- Step 12 – Producing state prosecutor forwards **certified copy** of summons/order (Form F) and proof of service (Form G) to requesting state prosecutor.
  - Also provide copy to producing state's Warrants Coordinator.

---

---

---

---

---

---

---

---

13

How it works:

- Step 13 – Witness may challenge producing state's summons/order through petition for writ of habeas corpus.
- Step 14 – Requesting state prosecutor arranges transfer(s) of prisoner. For non-prisoner, requesting state pays for witness's transportation.

---

---

---

---

---

---

---

---

14

How it works

- Possible alternative to physically transferring witness
  - Virtual testimony if *all* parties agree

---

---

---

---

---

---

---

---

15

### D. Alternatives to Uniform Act or Prisoners Act

- Executive Agreement
- Writ of Habeas Corpus ad Testificandum (28 U.S.C. § 2241(c)(5))
  - Use for federal prisoners (can't use for state prisoners)
  - Provides federal courts power to issue writ in state or federal proceeding at a party's request
  - Preferred method for securing federal inmates
  - Does not work in all states
  - Best to ask federal prison housing the inmate what it requires

16

---

---

---

---

---

---

---

---

---

---

### Addendum—International witnesses

- Just ask the Office of International Affairs how to do it. Do whatever it says—no more and no less.

17

---

---

---

---

---

---

---

---

---

---

## Thank you!

Jerry Schrottenboer  
 Assistant Appellate Attorney  
 Ingham County Prosecuting Attorney's Office  
 303 W. Kalamazoo St., 4<sup>th</sup> Floor  
 Lansing, MI 48933-2021  
[jschrottenboer@ingham.org](mailto:jschrottenboer@ingham.org)  
 (517) 483-6215

18

---

---

---

---

---

---

---

---

---

---