

CHAPTER 31-03 MEANS OF COMPELLING ATTENDANCE OF WITNESSES

31-03-01. "Subpoena" defined. The process by which the attendance of a witness is required is a subpoena.

31-03-02. Requisites of subpoenas and subpoenas duces tecum. Superseded by N.D.R.Civ.P., Rules 45(a), (b).

31-03-03. Form for subpoena duces tecum. Superseded by N.D.R.Civ.P., Rule 45(b).

31-03-04. Form of subpoena in criminal actions. Superseded by N.D.R.Crim.P., Rules 17, 58.

31-03-05. Who to issue subpoenas. Superseded by N.D.R.Civ.P., Rule 45(a).

31-03-06. Issuance of subpoenas by persons authorized to take depositions. Superseded by N.D.R.Civ.P., Rule 45(d).

31-03-07. Issuance of subpoenas by magistrate in criminal proceedings. Superseded by N.D.R.Crim.P., Rule 17.

31-03-08. Issuance of subpoena by state's attorneys. Superseded by N.D.R.Crim.P., Rule 17.

31-03-09. Court clerks required to issue blank subpoenas for defendants. Superseded by N.D.R.Crim.P., Rule 17.

31-03-10. Who may make service of subpoena. Superseded by N.D.R.Civ.P., Rule 45(c)(1).

31-03-11. Methods of service of subpoena - Exception. Superseded by N.D.R.Civ.P., Rule 45(c)(1).

31-03-12. Service of subpoena by mail, telegraph, or telephone. Superseded by N.D.R.Civ.P., Rule 45(c)(2).

31-03-13. Service of subpoenas - Proof - Peace officers required to make. Superseded by N.D.R.Crim.P., Rule 17.

31-03-14. Contempt and manner of punishment for failure to obey subpoena, to be sworn, or to testify. Superseded by N.D.R.Civ.P., Rule 45(f).

31-03-15. Civil penalty for failure to obey subpoena when called for defendant in criminal action. A witness disobeying a subpoena issued on the part of the defendant in a criminal action, unless the witness shows good cause for the witness's nonattendance, is liable to the defendant in the sum of fifty dollars, which may be recovered in a civil action.

31-03-16. Prisoners may be ordered to appear as witnesses - Depositions. Any court, by order, may require an officer having the custody of any person confined in any prison in this state to produce such person before it for oral examination in the county where the person is imprisoned. In all other cases, except as otherwise provided in section 31-03-18, such person must be examined by deposition.

31-03-17. Prisoner in custody of officer while deposition is taken - Officer to provide facilities for taking deposition. While a prisoner's deposition is being taken, the prisoner shall remain in the custody of the officer having the prisoner in charge and such officer shall provide reasonable facilities for the taking of the deposition.

31-03-18. Attendance of prisoners as witnesses for state in criminal actions - How effected. When the testimony of a witness for the state is required in a criminal action, before a court of record of this state, and such witness is confined in the penitentiary or in a county jail, an order for the witness's temporary removal from the penitentiary or such jail, and for the witness's production before such court, may be made by the court in which the action is pending or by the judge authorized by law to preside at the trial of such action. If the penitentiary or such jail is not located in the county in which the application is made, such order shall be made only upon the affidavit of the state's attorney or some other person on behalf of the state showing that the testimony is material and necessary, and even then the granting of the order shall be in the discretion of the court or such judge. The order must be executed by the sheriff of the county in which it is made by delivering to the warden or jailer having such witness in charge a copy of such order, and the warden or jailer shall deliver the person so required to such officer and shall take such officer's receipt for the person endorsed upon the copy of such order. The officer receiving any such person shall take the person before the proper court, shall keep the person safely, and when the person is required no longer as a witness, shall return the person to the custody from which the person was received. Neither the warden nor the jailer shall be responsible for any such person until the person's return, and upon the return of any such person the warden or jailer, as the case may be, shall endorse the warden's or jailer's receipt upon the original order. The sheriff executing any such order shall return the same to the clerk of the district court of the county from which it was issued, and said clerk shall file and preserve the same among the papers in the action. The expense of executing such order shall be paid by the county in which the order shall be made.

31-03-19. Undertaking for appearance of material witness for state who appeared at preliminary examination - Minors. If, after a preliminary examination, a defendant is held to answer, the magistrate before whom the examination was held may require any material witness examined on the part of the state:

1. To enter into a written undertaking, without surety, to the effect that such witness will appear and testify at the court to which the complaint and depositions, if any, are to be sent, or that the witness will forfeit such sum as the magistrate may fix and determine; or
2. To enter into a written undertaking for the witness's appearance with such sureties and in such sum as the magistrate may deem proper, if the magistrate is satisfied, by proof on oath, that there is reason to believe that such witness will not appear and testify unless security is required.

If any such material witness is a minor, any adult person may be allowed to give an undertaking for his appearance, or the magistrate may take the undertaking of such minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of minority.

31-03-20. Undertaking for appearance of material witness for state - When required - Procedure for requiring. If, after any material witness on the part of the prosecution has been discharged on the witness's undertaking without surety, it is satisfactorily shown on the sworn application of the state's attorney or of some other person on behalf of the state made to the magistrate before whom the preliminary examination was held, or to any judge, that the presence of such witness or any other person on the part of the prosecution is material or necessary on the trial in court, such magistrate, justice, or judge may compel such witness, or any other material witness on the part of the state, to give an undertaking with sureties, to appear on said trial and give testimony therein, and for that purpose, such magistrate, justice, or judge may issue a warrant against any such person directed to a sheriff, marshal, or other peace officer, to arrest such person and bring the person before such magistrate, justice, or judge.

31-03-21. When confinement of material witness for state permitted. Superseded by N.D.R.Crim.P., Rule 46.

46. **31-03-22. Conditional examinations of witness.** Superseded by N.D.R.Crim.P., Rule

46. **31-03-23. Forfeiture of undertaking by witness.** Superseded by N.D.R.Crim.P., Rule

31-03-24. Fees for witnesses who have been confined may be allowed - Amount allowable. In any criminal case in which it appears to the satisfaction of the trial judge that a witness who has been required to enter into an undertaking, with sureties, for the witness's appearance at the trial court, was committed to and confined in prison because the witness actually was unable to obtain and furnish acceptable sureties by reason of being a stranger or a transient in the community, or for other good and sufficient reason, such judge may order the allowance to such witness, and the payment by the proper county, of witness fees, at the rate of fifty cents per day, for and during the period of imprisonment.

31-03-25. 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 a criminal prosecution in this state, certifies under the seal of such court that:

1. There is a criminal prosecution pending in such court;
2. A person who is within this state is a material witness in such prosecution; and
3. The person's presence will be required for a specified number of days,

any judge of a court of record in the county in which such person may be, upon presentation of such certificate, shall fix a time and place for a hearing and shall notify the witness of such time and place.

31-03-26. Summons issued to compel witness to appear in another state. If at the hearing on a certificate to secure the attendance of a person within this state as a material witness in a criminal prosecution in another state, 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 in the other state; and
3. 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 the witness protection from arrest and the service of civil and criminal process,

the judge 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 at a time and place specified in the summons.

31-03-27. Mileage and witness fees of witness summoned to another state - Failure to appear - Penalty. If the witness who is summoned as provided in section 31-03-25, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile, by the ordinarily traveled route to and from the court where the prosecution is pending, and five dollars for each day that the witness is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, the witness 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.

31-03-28. Witness from another state summoned to testify in this state. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions in this state, is a material witness in a 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. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

31-03-29. Mileage and fees of witness from another state - Length of time to remain in state. If the witness from another state is summoned to attend and testify in a criminal prosecution in this state, the witness is entitled to the fees and expenses provided to witnesses under section 31-01-16. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state for a longer period of time than the period mentioned in the certificate.

31-03-30. Witness coming into state - Exemption from arrest and service of process. If a person comes into this state in obedience to a summons directing the person to attend and testify in a criminal prosecution in this state, the person shall not be subject, while in this state pursuant to such summons, to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this state under the summons.

31-03-31. Witness passing through state to testify in other state exempt from arrest and service of process. If a person passes through this state while going to another state in obedience to a summons to attend and testify in a criminal prosecution in that state or while returning therefrom, the person, while passing through this state, shall not be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this state under the summons.