Chapter 139

1965 REPLACEMENT PART

Witnesses

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ATTENDANCE OF WITNESSES WITHIN THE STATE

139.010 Subpena defined. The process by which the attendance of a witness before a court or magistrate is required is a subpena.

139.020 Issuance of subpena by magistrate for witnesses at preliminary examination. A magistrate before whom an information is laid or complaint made may issue subpenas subscribed by him for witnesses within the state, either on behalf of the state or of the defendant.

139.030 Issuance of subpena by district attorney for witnesses before grand jury. The district attorney may issue subpenas subscribed by him for witnesses within the state in support of the prosecution or for such other witnesses as the grand jury directs to appear before the grand jury upon an investigation pending before it.

139.040 Issuance of subpena by district attorney for witnesses at trial. The district attorney may issue subpenas subscribed by him for not to exceed five witnesses within the state in support of an indictment to appear before the court at which it is to be tried.

139.050 Issuance by clerk for witnesses for defendant. Upon application of the defendant, the clerk of a court in which a criminal action is pending for trial shall, at the expense of the state, issue in blank, under the seal of the court, subpenas subscribed by him as clerk for not to exceed five witnesses within the state; provided, however, that any defendant may have subpenas issued for any number of witnesses at his own expense without an order of the court.

139.060 Proceeding to obtain subpenas for more than five witnesses. If either party in a criminal action desires more than five witnesses, as provided in ORS 139.040 and 139.050, application therefor shall be made to the court or judge thereof by motion for an order allowing the issuance of subpenas for such additional witnesses, which motion shall be supported either by the statement of the district attorney in writing or by the affidavit of the defendant. The statement or affidavit shall state the names of such witnesses, their places of residence and the facts expected to be proved by each of them. The court or judge thereof shall make an order allowing the issuance of subpenas for so many of such witnesses as appear from such statement or affidavit to be necessary and material to a fair, full and impartial trial.
[Amended by 1961 c.289 §2]

139.070 Forms of subpenas. Subpenas authorized by ORS 139.020 to 139.050 shall be substantially in the following form:

(1) By a magistrate:

IN THE NAME OF THE STATE OF OREGON

To A—— B——:

You are hereby commanded to appear before C. D., (adding his name of office and place of jurisdiction), at (naming the place), on (stating the day and hour), as a witness on the examination of a criminal charge against E. F. on behalf of (the state or the defendant, as the case may be).

G. H.

Dated the —— day of ——, 19—.

(Adding his name of office and place of jurisdiction, as in the body of the subpena.)

(2) By the district attorney:

IN THE NAME OF THE STATE OF OREGON

To A—— B——:

You are hereby commanded to appear before (the grand jury of the County of —— or the Circuit Court for the County of ——, as the case may be), at (naming the place), on (stating the day and hour), as a witness (before the grand jury or in a criminal action prosecuted by the State of Oregon against E. F., as the case may be).

Dated the —— day of ——, 19—.

G. H., District Attorney.

(3) By the clerk:

IN THE NAME OF THE STATE OF OREGON

To A—— B——:

You are hereby commanded to appear before the Circuit Court for the County of —— at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the State of Oregon against E. F. on behalf of the defendant.

Witness my name and the seal of said court, affixed at ——, the —— day of ——, 19—.

[L. S.] G. H., Clerk.

139.080 Subpenas when books, papers or documents are required. If books, papers or documents are required, a direction to the following effect shall be added to the form provided in ORS 139.070: "And you are required, also, to bring with you the following: (describing intelligibly the books, papers or documents required)."

139.090 By whom a subpena is served. A subpena may be served by the defendant or any other person over 18 years of age and shall be served by any sheriff or constable within his county or district, as the case may be, when delivered to him for service, either on the part of the state or of the defendant.

139.100 How a subpena is served; proof of service. A subpena is served by delivering a copy to the witness personally; and proof of the service is made in the same manner as in the service of a summons.
[Amended by 1965 c.418 §1]

139.110 Certain sections applicable to criminal proceedings. The provisions of ORS 44.150, 44.180 to 44.220 and subsections (1) and (2) of ORS 44.230 apply in criminal actions, examinations and proceedings.
[Amended by 1955 c.523 §2]

139.120 [Repealed by 1961 c.289 §3]

139.130 [Repealed by 1961 c.289 §3]

139.140 Payment of witness who is from without state or poor. Whenever any person attends any court, grand jury or committing magistrate as a witness on behalf of the state or of any person accused of a crime upon request of the district attorney or subpena, or by virtue of a recognizance for that purpose, and it appears that such person has come from any other state or territory of the United States or from any foreign country or that such person is poor, the court may, by an order entered on its minutes, direct the county treasurer of the county in which the court or grand jury is sitting to pay to such witness such sum of money as to said court seems reasonable for his expenses and witness fees; and said order, so entered, is sufficient authority for the issuance and payment of any county warrant therefor.

139.150 Undertaking of material witness at time of making complaint or at arraignment. A magistrate may, at the time a complaint is made or information laid before him, or a judge of the circuit court, at the time of the arraignment of a defendant in a criminal action upon indictment, may, on motion of the district attorney, require each person deemed to be a material witness on behalf of the state to give a written undertaking with sufficient sureties and in such sum as the magistrate or judge deems proper to the effect that such person will appear and testify on behalf of the state at the trial of the defendant or at the examination of the charge, as the case may be.

139.160 Undertaking of material witness at time of holding defendant to answer. (1) When the magistrate has reason to believe at the time of the holding the defendant to answer that any of the material witnesses examined before him on behalf of the state will not appear and testify at the court to which such defendant is held to answer unless security therefor is given, he may require such witness to enter into a written undertaking with such sureties and in such sum as he deems proper for the appearance of such witness at the court to which the defendant is held to answer.

(2) Infants and married women who are material witnesses against the defendant may in like manner be required to procure sureties for their appearance as provided in subsection (1) of this section.

139.170 Commitment of material witness who refuses to give undertaking. If a witness required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the court or magistrate making such order shall commit him to the jail of the county until he complies or is legally discharged.

139.180 Inability to furnish bond; compensation during detention. Any person held in the county jail or otherwise detained by the state as a witness in a criminal case for the reason that he is unable to furnish bond for his appearance before the grand jury or at the trial of any such case shall receive as compensation from the county in which the case arose $7.50 for each day, or fraction thereof, that he is so held or detained.
[Amended by 1961 c.474 §1]

139.190 to 139.200 [Reserved for expansion]

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

139.210 Definitions. (1) "Witness," as used in ORS 139.210 to 139.260, 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.

(2) The word "state" shall include any territory of the United States and District of Columbia.

(3) The word "summons" shall include a subpena, order or other notice requiring the appearance of a witness.

139.220 Where witness material to proceeding in another state is in this state. (1) 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.

(2) 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.

(3) 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 subpena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state only after the tender of payment of the mileage and per diem herein provided for.

(4) 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 $5 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.

139.230 Where witness material to proceeding in this state is in another state. (1) 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, 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 county 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.

(2) 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 the prosecution is pending and $5 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 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 subpena issued from a court of record in this state.

139.240 Immunity of witness from arrest or service of process. (1) 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.

(2) 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.

139.250 Construction of ORS 139.210 to 139.260. ORS 139.210 to 139.260 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of the states which enact the Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings.

139.260 Short title. ORS 139.210 to 139.260 may be cited as Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.

139.270 to 139.300 [Reserved for expansion]

COMPETENCY OF CERTAIN WITNESSES

139.310 Defendant as witness. In the trial of or examination upon any indictment, complaint, information or other proceeding before any court, magistrate, jury or other tribunal against a person accused or charged with the commission of a crime, the person so charged or accused shall, at his own request, but not otherwise, be deemed a competent witness, the credit to be given to his testimony being left solely to the jury, under the instructions of the court, or to the discrimination of the magistrate, grand jury or other tribunal before which such testimony is given. His waiver of this right creates no presumption against him. The defendant or accused, when offering his testimony as a witness in his own behalf, gives the prosecution a right to cross-examination upon all facts to which he has testified and which tend to his conviction or acquittal.

139.315 Codefendant as witness. No person named in an indictment, information or complaint as a codefendant shall be deemed incompetent to testify as a witness at the trial of another defendant solely because he is so named.
[1961 c.288 §1]

139.320 Husband or wife as witness. In all criminal actions in which the husband is the party accused, the wife is a competent witness and when the wife is the party accused, the husband is a competent witness; but neither husband nor wife in such cases shall be compelled or allowed to testify in such cases unless by consent of both of them; provided, that in all cases of personal violence upon either by the other or of personal violence or other unlawful act committed against any minor child of either or both of the parties, the injured party, husband or wife, shall be allowed to testify against the other; provided, further, that in all criminal actions for polygamy or adultery, the husband or wife of the accused is a competent witness and shall be allowed to testify against the other without the consent of the other as to the fact of marriage.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 15, 1965.

Sam R. Haley
Legislative Counsel