

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0245

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 22** - 01/26/2002

Introduced by: The Committee on Judiciary at the request of the Attorney General

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Rendition of Prisoners as Witnesses
2 in Criminal Proceedings Act.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Witness," a person who is confined in a penal institution in any state and whose
6 testimony is desired in another state in any criminal proceeding or investigation by
7 grand jury or in any criminal action before a court;

8 (2) "Penal institution," includes any jail, prison, penitentiary, house of correction, or other
9 place of penal detention;

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

12 Section 2. Any judge of a state court of record in another state, which by its laws has made
13 provisions for commanding persons confined in penal institutions within that state to attend and
14 testify in this state, may certify:

15 (1) That there is a criminal proceeding or investigation by a grand jury or a criminal



1 action pending in a court;

2 (2) That a person who is confined in a penal institution in this state may be a material
3 witness in the proceeding, investigation, or action; and

4 (3) That the person's presence will be required during a specified time.

5 Upon presentation of the certificate to any judge having jurisdiction over the person confined
6 or to any judge having jurisdiction in the location where the person is confined, and upon notice
7 to the attorney general, the judge in this state shall fix a time and place for a hearing and shall
8 make an order directed to the person having custody of the prisoner requiring that the prisoner
9 be produced before the judge at the hearing.

10 Section 3. If at the hearing the judge determines:

11 (1) That the witness may be material and necessary;

12 (2) That the witness's attending and testifying are not adverse to the interests of this state
13 or to the health or legal rights of the witness;

14 (3) That the laws of the state in which the witness is required to testify will give the
15 witness protection from arrest and the service of civil and criminal process because
16 of any act committed prior to the witness's arrival in the state under the order; and

17 (4) That as a practical matter the possibility is negligible that the witness may be subject
18 to arrest or to the service of civil or criminal process in any state through which the
19 witness may pass;

20 the judge shall issue an order, with a copy of the certificate attached, directing the witness to
21 attend and testify, directing the person having custody of the witness to produce the witness in
22 the court where the criminal action is pending, or where the grand jury investigation is pending,
23 at a time and place specified in the order, and prescribing such conditions as the judge shall
24 determine.

1 Section 4. The order to the witness and to the person having custody of the witness shall
2 provide for the return of the witness at the conclusion of the witness's testimony, proper
3 safeguards on the witness's custody, and proper financial reimbursement or prepayment by the
4 requesting jurisdiction for all expenses incurred in the production and return of the witness, and
5 may prescribe such other conditions as the judge thinks proper or necessary. Mileage and
6 expenses shall be allowed as provided for state employees. The order does not become effective
7 until the judge of the state requesting the witness enters an order directing compliance with the
8 conditions prescribed.

9 Section 5. This Act does not apply to any person in this state confined as mentally ill or under
10 sentence of death.

11 Section 6. If a person confined in a penal institution in any other state may be a material
12 witness in a criminal action pending in a court of record or in a grand jury investigation in this
13 state, a circuit court judge or magistrate may certify:

- 14 (1) That there is a criminal proceeding or investigation by a grand jury or a criminal
15 action pending in this court;
- 16 (2) That a person who is confined in a penal institution in the other state may be a
17 material witness in the proceeding, investigation, or action; and
- 18 (3) That the person's presence will be required during a specified time.

19 The certificate shall be presented to a judge of a court of record in the other state having
20 jurisdiction over the prisoner confined, and a notice shall be given to the attorney general of the
21 state in which the prisoner is confined.

22 Section 7. The court may enter an order directing compliance with the terms and conditions
23 prescribed by the judge of the state in which the witness is confined.

24 Section 8. If a witness from another state comes into or passes through this state under an

1 order directing the witness to attend and testify in this or another state, the witness is not subject,
2 while in this state pursuant to the order, to arrest or the service of process, civil or criminal,
3 because of any act committed prior to this arrival in this state under the order.

4 Section 9. The provisions of this Act shall be so construed as to effectuate their general
5 purpose to make uniform the law of those states which enact them.

6 Section 10. This Act may be cited as the Uniform Rendition of Prisoners as Witnesses in
7 Criminal Proceedings Act.