


**SUBPOENA SERVICE**

Statutes And Pertinent Information For The  
Attorney




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**Statutes**

Many statutes governing subpoenas and their service are found in sections 1326 through 1332 of the Penal Code.

No statutes limit the hours in which subpoenas can be served.

*The following are the most applicable statutes pertaining to the service of subpoenas.*

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**1328 (b)(1) PC – Service Of Subpoena On Minor**

Service on a minor shall be made on the parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, on any person having care or control of the minor or with whom the minor resides or by whom the minor is employed, unless the specified person is the defendant, and on the minor if they are 12 years of age or older. The person served is obligated to produce the minor in court and can be punished for contempt if they do not.

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**1328 (2) PC – Service Of Subpoena On Minor**

If a minor is alleged to come within section 300, 601, or 602 WIC, and is not residing with a parent or guardian, regardless of the minor's age, service shall also be made upon the designated agent for service of process at the county child welfare department or probation department under whose jurisdiction the child has been placed.

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**1330 PC – Out Of County Witness Attendance**

No person is obliged to attend court as a witness out of the county where they reside unless the distance is less than 150 miles from their residence to the place of trial. If the DA can show a judge evidence of the witness is material, and their attendance is material and necessary, the DA can initiate proceedings to have the judge of the court in which the offense is triable, or a justice of the Supreme Court, or a judge of a Superior Court endorse on the subpoena an order for the attendance of the witness.

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**1334.2 PC – Out Of State Witness Attendance**

No witness is obligated to attend court from their place of residence outside the state. If the DA can show a judge evidence of the witness is material, and their attendance is material and necessary, the judge can issue an order for attendance of the witness. A judge from the state in which the witness resides shall also endorse the order. The order is served upon the witness who shall attend a hearing. If, at the hearing, the judge determines the witness is material, necessary and it will not cause undue hardship to be compelled to attend and testify in the court proceeding in our state, the witness will be ordered to attend.

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### 1334.4 PC – Foreign Witness; Immunity From Arrest Or Process

If a person comes into this state in obedience to a subpoena directing them to attend and testify in this state, they shall not, while in this state pursuant to the subpoena or order, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before their entrance into this state under the subpoena.

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### 1334.5 PC – Foreign Witness Passing Through State; Immunity From Arrest Or Process

If a person passes through this state while going to another state in obedience to a subpoena or order to attend and testify in that state or while returning therefrom, they 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 their entrance into this state under the subpoena or order.

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### Other Factors And Pertinent Information

- Why have Investigators served subpoenas since March 2017 and not Investigative Assistants?
- Skip Traces are conducted for all subpoenas to be served.
- Do not submit Requests For Investigation for subpoena service as it delays the process. Requests for subpoena service should be made to Witness Coordination.
- Serving a cooperative victim or witness a subpoena.

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### Other Factors And Pertinent Information

- Effect of short notice subpoena service requests.
- Just prior to court, check and make certain if a subpoena has been served or not.
- If possible, provide a 3 week notice for service of homeless and uncooperative subjects.
- Have the Judge order witnesses back to court.
- Once a subpoena is served, the Proof of Service is returned and maintained by Witness Coordination.

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### Issuing Bench Warrant for FTA

- Personal service of subpoena required for issuance of bench warrant. Must provide valid proof of service to court.
- Failure to comply with mail service subpoena may be punished as a contempt but a warrant of arrest or body attachment may not be issued (PC 1328d).
- Bench warrant issued by court for FTA may result in cite and release upon promise to appear unless accompanied by body attachment (PC 827.1(k)).

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### Procedure for Securing Attendance of Out-of-State Witness (PC 1334 et seq.)

- 1) Judge from requesting state issues a certificate that witness is material.
- 2) Judge from state in which witness located makes findings that:
  - Witness is material and necessary.
  - It will not cause undue hardship.
  - Laws of requesting state will protect the witness from arrest, etc.
  - Witness will be provided payment to cover travel expenses in advance.

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### Subpoena Service Resources

- Shared Drive: WPC folder: Out of State -- Interstate Witnesses.
- Contains summary of procedure and templates for interstate witness proceedings (declaration and request for certificate, certificate, letter to prosecuting attorney from the other state).
- California Subpoena Handbook, John Sink.

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