CHAPTER 7

Compelling Attendance of Witnesses

**SECTION 19‑7‑50.** Means by which prisoners shall be brought into court as witnesses.

 Whenever it shall be necessary to bring any prisoner into court as a witness in any case the presiding judge may order such prisoner to be brought into court, without the necessity of a writ of habeas corpus. And when the said prisoner shall have given his evidence the judge shall cause him to be remanded to the custody of the officer to whose keeping he shall have been originally committed.

HISTORY: 1962 Code Section 26‑205; 1952 Code Section 26‑205; 1942 Code Section 690; 1932 Code Section 690; Civ. P. ‘22 Section 706; Civ. C. ‘12 Section 3971; Civ. C. ‘02 Section 2867; G. S. 2201; R. S. 2331; 1808 (5) 571.

CROSS REFERENCES

Securing attendance of witnesses in court under South Carolina Rules of Civil Procedure, see Rule 45, SCRCP.

Library References

Prisons 286.

Witnesses 18.

Westlaw Topic Nos. 310, 410.

C.J.S. Prisons and Rights of Prisoners Sections 26 to 28, 30 to 33, 35 to 44, 47, 137 to 141, 150.

C.J.S. Witnesses Sections 65 to 66.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 5, Persons Confined in Prisons as Witnesses.

**SECTION 19‑7‑60.** Process to compel attendance of criminal defendant’s witnesses; sanctions for disobedience.

 In all criminal prosecutions the accused shall have compulsory process for obtaining witnesses in his favor. The compulsory process shall be in misdemeanors a subpoena under the official signature of the clerk of the court or other judicial officer. Such subpoena or a copy thereof shall be served upon the witness a reasonable time before such witness is required to attend court. For any disobedience to such subpoena the court may punish for contempt.

HISTORY: 1962 Code Section 26‑206; 1952 Code Section 26‑206; 1942 Code Section 983; 1932 Code Section 983; Cr. P. ‘22 Section 74; Cr. C. ‘12 Section 71; Cr. C. ‘02 Section 45; G. S. 2638; R. S. 45; 1731 (3) 286; 1839 (11) 23; 1896 (22) 102.

CROSS REFERENCES

Process to compel attendance of criminal defendants witnesses under South Carolina Rules of Civil Procedure, see Rule 45, SCRCP.

Provision against unreasonably detaining witnesses, see SC Const, Art I, Section 15.

Right of defendant in criminal action to have compulsory process for obtaining witnesses in his favor, see SC Const, Art I, Section 14.

Right of defendant in criminal case to produce witnesses in his favor, see Section 17‑23‑60.

Library References

Witnesses 2, 7.

Westlaw Topic No. 410.

C.J.S. Criminal Law Sections 644 to 662.

C.J.S. Witnesses Sections 20 to 31.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 2, Right of Accused to Compulsory Process.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Under this section [Code 1962 Section 26‑206], there must be a showing that the person wanted is really a witness “in favor” of the defendant, and that his testimony would be material to the defendant’s cause. State v. Pope (S.C. 1907) 78 S.C. 264, 58 S.E. 815.

It is not error to refuse to process a witness that is a resident of another state. State v. Murphy (S.C. 1896) 48 S.C. 1, 25 S.E. 43. Witnesses 6

And in cases of misdemeanor defendant cannot have his witnesses bound over. State v. Thomas (S.C. 1855) 8 Rich. 295. Witnesses 20

2. Constitutional issues

Family court judge who sua sponte excuses witnesses subpoenaed by student charged with delinquency violates Sixth Amendment of United States Constitution and Section 19‑7‑60. In Interest of Angela H. (S.C. 1986) 287 S.C. 598, 340 S.E.2d 544.