CHAPTER 9

Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings

**SECTION 19‑9‑10.** Short title.

 This chapter may be cited as “Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.”

HISTORY: 1962 Code Section 26‑301; 1952 Code Section 26‑301; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Witnesses 6.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 14 to 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

Forms

Am. Jur. Pl. & Pr. Forms Witnesses Section 29 , Introductory Comments.

**SECTION 19‑9‑20.** Definitions.

 “Witnesses” as used in this chapter 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.

 The word “state” shall include any territory of the United States and the District of Columbia.

 The word “summons” shall include a subpoena, order or other notice requiring the appearance of a witness.

HISTORY: 1962 Code Section 26‑302; 1952 Code Section 26‑302; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Witnesses 6.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 14 to 19.

**SECTION 19‑9‑30.** Holding of hearing when resident is wanted as witness 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 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.

HISTORY: 1962 Code Section 26‑303; 1952 Code Section 26‑303; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Witnesses 6.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 14 to 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

**SECTION 19‑9‑40.** Ordering resident witness to attend out‑of‑state proceedings.

 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 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 in which the prosecution is pending or in which 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.

HISTORY: 1962 Code Section 26‑304; 1952 Code Section 26‑304; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Witnesses 6.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 14 to 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

**SECTION 19‑9‑50.** Delivery of witness to custody of officer of requesting state.

 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 such 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 a subpoena or summons, order that such witness be forthwith taken into custody and delivered to an officer of the requesting state.

HISTORY: 1962 Code Section 26‑305; 1952 Code Section 26‑305; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Witnesses 6.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 14 to 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

**SECTION 19‑9‑60.** Penalty for failure to attend as witness out of state.

 If the witness who is summoned as provided in Section 19‑9‑40, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars 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.

HISTORY: 1962 Code Section 26‑306; 1952 Code Section 26‑306; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Witnesses 6, 22.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 14 to 19, 62 to 64.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

**SECTION 19‑9‑70.** Request by this State for witness from reciprocating 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 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 court stating these facts and specifying the number of days the witness will be required. Such 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. The certificate shall be presented to a judge of a court of record in the county in which the witness is found.

HISTORY: 1962 Code Section 26‑307; 1952 Code Section 26‑307; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Witnesses 6.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 14 to 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

NOTES OF DECISIONS

In general 1

1. In general

In a prosecution for violations of Section 16‑15‑140 [repealed], the trial court properly exercised its discretion in refusing to subpoena an out‑of‑state witness, pursuant to Section 19‑9‑70, on the basis that he was not a material witness, where the witness was a doctor whose proposed testimony would be that the victim had suffered no physical injury, and where the State did not contend and offered no evidence that she had been physically injured. State v. McFarlane (S.C. 1983) 279 S.C. 327, 306 S.E.2d 611.

**SECTION 19‑9‑80.** Costs and fees paid to nonresident witness.

 If the witness is summoned to attend and testify in this State he shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars for each day that he is required to travel and attend as a witness.

HISTORY: 1962 Code Section 26‑308; 1952 Code Section 26‑308; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Witnesses 23.

Westlaw Topic No. 410.

C.J.S. Federal Civil Procedure Section 585.

C.J.S. Witnesses Sections 70 to 86.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

**SECTION 19‑9‑90.** Limit on time nonresident witness may be kept in State.

 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.

HISTORY: 1962 Code Section 26‑309; 1952 Code Section 26‑309; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Witnesses not being unreasonably detained, see SC Const, Art I, Section 15.

Library References

Witnesses 6.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 14 to 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

**SECTION 19‑9‑100.** Penalty for failure to attend as witness in this State.

 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 summons issued from a court of record in this State.

HISTORY: 1962 Code Section 26‑310; 1952 Code Section 26‑310; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Witnesses 6, 22.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 14 to 19, 62 to 64.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

**SECTION 19‑9‑110.** Nonresident witness shall not be subject to arrest or service of process.

 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.

HISTORY: 1962 Code Section 26‑311; 1952 Code Section 26‑311; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Immunity from arrest of party or witness while attending, going to or returning from court, see Section 17‑13‑60.

Library References

Arrest 9, 60.

Process 120.

Westlaw Topic Nos. 35, 313.

C.J.S. Arrest Sections 4 to 5, 77 to 81.

C.J.S. Process Sections 33, 36.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

NOTES OF DECISIONS

In general 1

1. In general

Service of process upon defendant’s agents was void where they were in the state at the direction of the solicitor to testify in a criminal proceeding and where there was no express or implied waiver of their statutory immunity from service of process. Zeller v. Cumberland Truck Sales (S.C. 1979) 272 S.C. 558, 253 S.E.2d 111. Process 120

**SECTION 19‑9‑120.** Witnesses passing through State shall not be subject to arrest or 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 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.

HISTORY: 1962 Code Section 26‑312; 1952 Code Section 26‑312; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Arrest 9, 60.

Process 120.

Westlaw Topic Nos. 35, 313.

C.J.S. Arrest Sections 4 to 5, 77 to 81.

C.J.S. Process Sections 33, 36.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Witnesses Section 4, Out‑Of‑State Witnesses.

**SECTION 19‑9‑130.** Rule of construction.

 This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact substantially identical legislation.

HISTORY: 1962 Code Section 26‑313; 1952 Code Section 26‑313; 1948 (45) 1810.

CROSS REFERENCES

Applicability of this chapter to state grand juries, see Section 14‑7‑1680.

Library References

Statutes 1225.

Witnesses 6.

Westlaw Topic Nos. 361, 410.

C.J.S. Witnesses Sections 14 to 19.