

SUBCHAPTER VIII. ATTENDANCE OF WITNESSES; DEPOSITIONS.

Article 42.

Attendance of Witnesses Generally.

§ 15A-801. Subpoena for witness.

The presence of a person as a witness in a criminal proceeding may be obtained by subpoena, which must be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure, G.S. 1A-1, except that subdivision (2) of subsection (b) of the rule does not apply to subpoenas issued under this section. (1973, c. 1286, s. 1; 1975, c. 166, s. 15; 2003-276, s. 2.)

§ 15A-802. Subpoena for the production of documentary evidence.

The production of records, books, papers, documents, or tangible things in a criminal proceeding may be obtained by subpoena which must be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure, G.S. 1A-1, except that subdivision (2) of subsection (b) of the rule does not apply to subpoenas issued under this section. (1973, c. 1286, s. 1; 1975, c. 166, s. 15; 2003-276, s. 3.)

§ 15A-803. Attendance of witnesses.

(a) **Material Witness Order Authorized.** – A judge may issue an order assuring the attendance of a material witness at a criminal proceeding. This material witness order may be issued when there are reasonable grounds to believe that the person whom the State or a defendant desires to call as a witness in a pending criminal proceeding possesses information material to the determination of the proceeding and may not be amenable or responsive to a subpoena at a time when his attendance will be sought.

(b) **When Order Issued.** – A material witness order may be issued by a judge of superior court at any time after the initiation of criminal proceedings. A judge of district court may issue a material witness order only at the time that a defendant is bound over to superior court at a probable-cause hearing.

(c) **How Long Effective.** – A material witness order remains in effect during the period indicated in the order by the issuing judge unless it is sooner modified or vacated by a judge of superior court. In no event may a material witness order which provides for incarceration of the material witness be issued for a period longer than 20 days, but upon review a superior court judge in his discretion may renew an order one or more times for periods not to exceed five days each.

(d) **Procedure.** – A material witness order may be obtained upon motion supported by affidavit showing cause for its issuance. The witness must be given reasonable notice, opportunity to be heard and present evidence, and the right of representation by counsel at a hearing on the motion. Counsel for a material witness may be appointed and compensated in the same manner as counsel for an indigent defendant. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. The order must be based on findings of fact supporting its issuance.

(e) **Order.** – If the court makes a material witness order:

- (1) It may direct release of the witness in the same manner that a defendant may be released under G.S. 15A-534.
- (2) It may direct the detention of the witness.

(f) **Modification or Vacation.** – A material witness order may be modified or vacated by a judge of superior court upon a showing of new or changed facts or circumstances by the witness, the State, or any defendant.

(g) Securing Attendance or Custody of Material Witness. – The witness may be required to attend the hearing by subpoena, or if the court considers it necessary, by order for arrest. An order for arrest also may be issued if it becomes necessary to take the witness into custody after issuance of a material witness order. (1973, c. 1286, s. 1; 2000-144, s. 29.)

§ 15A-804. Voluntary protective custody.

(a) Upon request of a witness, a judge of superior court may determine whether he is a material witness, and may order his protective custody. The order may provide for confinement, custody in other than a penal institution, release to the custody of a law-enforcement officer or other person, or other provisions appropriate to the circumstances.

(b) A person having custody of the witness may not release him without his consent unless directed to do so by a superior court judge, or unless the order so provides.

(c) The issuance of either a material witness order or an order for voluntary protective custody does not preclude the issuance of the other order.

(d) An order for voluntary protective custody may be modified or vacated as appropriate by a superior court judge upon the request of the witness or upon the court's own motion. (1973, c. 1286, s. 1.)

§ 15A-805. Securing attendance of witnesses confined in institutions within the State.

(a) Upon motion of the State or any defendant, the judge of a court in which a criminal proceeding is pending must, for good cause shown, enter an order requiring that any person confined in an institution in this State be produced and compelled to attend as a witness in the action or proceeding.

(b) If the witness is confined pursuant to another pending criminal proceeding, and the judge determines that the production of the witness would result in an unreasonable interference with the conduct of the prior proceeding, he may deny the order. If an order for production is issued, a judge or justice of the appellate division of the General Court of Justice may, upon application of a defendant or prosecutor in the other district for good cause shown, vacate the order for production.

(c) The costs of production of the witness are assessed as are other witness fees. (1973, c. 1286, s. 1; 1975, c. 166, s. 27.)

§§ 15A-806 through 15A-810. Reserved for future codification purposes.