

TITLE 19
CRIMINAL PROCEDURE

CHAPTER 31
EXAMINATION OF WITNESSES CONDITIONALLY

19-3101. WITNESSES MAY BE CONDITIONALLY EXAMINED. When a defendant has been held to answer a charge for a public offense, he may, either before or after an indictment, have witnesses examined conditionally, on his behalf, as prescribed in this chapter, and not otherwise.

[(19-3101) Cr. Prac. 1864, sec. 549, p. 280; R.S., R.C., & C.L., sec. 8160; C.S., sec. 9140; I.C.A., sec. 19-3001.]

19-3102. GROUNDS FOR EXAMINATION. When a material witness for the defendant is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

[(19-3102) Cr. Prac. 1864, sec. 555, p. 281; R.S., R.C., & C.L., sec. 8161; C.S., sec. 9141; I.C.A., sec. 19-3002.]

19-3103. CONTENTS OF APPLICATION. The application must be made upon affidavit, stating:

1. The nature of the offense charged.
2. The state of the proceedings in the action.
3. The name and residence of the witness, and that his testimony is material to the defense of the action.
4. That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

[(19-3103) Cr. Prac. 1864, sec. 553, p. 280; R.S., R.C., & C.L., sec. 8162; C.S., sec. 9142; I.C.A., sec. 19-3003.]

19-3104. MAKING OF APPLICATION. The application may be made to the court during the term thereof, or to the judge in vacation, and must be upon three days' notice to the prosecuting attorney.

[(19-3104) Cr. Prac. 1864, sec. 554, p. 281; R.S., R.C., & C.L., sec. 8163; C.S., sec. 9143; I.C.A., sec. 19-3004.]

19-3105. ORDER FOR EXAMINATION. If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order be served on the prosecuting attorney, within a specified time before that fixed for the examination.

[(19-3105) Cr. Prac. 1864, sec. 555, p. 281; R.S., R.C., & C.L., sec. 8164; C.S., sec. 9144; I.C.A., sec. 19-3005.]

19-3106. PROCEEDINGS IN ABSENCE OF COUNTY ATTORNEY. The order must direct that the examination be taken before a magistrate named therein, and on

proof being furnished to such magistrate of service upon the prosecuting attorney of a copy of the order, if no counsel appear on the part of the people, the examination must proceed.

[(19-3106) R.S., R.C., & C.L., sec. 8165; C.S., sec. 9145; I.C.A., sec. 19-3006.]

19-3107. DISCONTINUANCE OF EXAMINATION. If the prosecuting attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the state, or is not sick and infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

[(19-3107) R.S., R.C., & C.L., sec. 8166; C.S., sec. 9146; I.C.A., sec. 19-3007.]

19-3108. SUBPOENA FOR WITNESS. The attendance of the witness may be enforced by a subpoena, issued by the magistrate before whom the examination is to be taken.

[(19-3108) R.S., R.C., & C.L., sec. 8167; C.S., sec. 9147; I.C.A., sec. 19-3008.]

19-3109. TAKING AND AUTHENTICATION OF TESTIMONY. The testimony given by the witness must be reduced to writing and authenticated in the same manner as the testimony of a witness taken in support of an information.

[(19-3109) R.S., R.C., & C.L., sec. 8168; C.S., sec. 9148; I.C.A., sec. 19-3009.]

19-3110. TRANSMISSION OF DEPOSITIONS. The deposition taken must, by the magistrate, be sealed up and transmitted to the clerk of the court in which the action is pending or may come for trial.

[(19-3110) R.S., R.C., & C.L., sec. 8169; C.S., sec. 9149; I.C.A., sec. 19-3010.]

19-3111. USE OF DEPOSITION ON TRIAL. The deposition, or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness or infirmity, or of his continued absence from the state. Upon reading the depositions in evidence, the same objections may be taken to a question or answer contained therein, as if the witness had been examined orally in court.

[(19-3111) Cr. Prac. 1864, sec. 569, p. 282; R.S., R.C., & C.L., sec. 8170; C.S., sec. 9150; I.C.A., sec. 19-3011.]

19-3112. DEPOSITION OF IMPRISONED WITNESS. When a material witness for a defendant, under a criminal charge, is a prisoner in the state prison, or in the county jail of a county other than that in which the defendant is to be tried, his deposition may be taken on behalf of the defendant, in the same manner provided in the case of a witness who is sick, and the provisions of

this chapter, so far as applicable, govern in the application for, and in the taking and use of, such deposition. Such deposition may be taken before any magistrate or notary public of the county in which the jail or prison is situated. Every officer before whom testimony is taken by virtue hereof shall have authority to administer, and must administer, an oath to the witness that his testimony shall be the truth, the whole truth, and nothing but the truth.

[(19-3112) R.S., R.C., & C.L., sec. 8171; C.S., sec. 9151; I.C.A., sec. 19-3012.]