§ 620.50 Material witness order; hearing, determination and execution of order.

1. The hearing upon the application must be conducted as follows:

(a) The applicant has the burden of proving by a preponderance of the evidence all facts essential to support a material witness order, and any testimony so adduced must be given under oath;

(b) The prospective witness may testify under oath or may make an unsworn statement;

(c) The prospective witness may call witnesses in his behalf, and the court must cause process to be issued for any such witness whom he reasonably wishes to call, and any testimony so adduced must be given under oath;

(d) Upon the hearing, evidence tending to demonstrate that the prospective witness does or does not possess information material to the criminal action in issue, or that he will or will not be amenable or respond to a subpoena at the time his attendance will be sought, is admissible even though it consists of hearsay.

2. If the court is satisfied after such hearing that there is reasonable cause to believe that the prospective witness (a) possesses information material to the pending action or proceeding, and (b) will not be amenable or respond to a subpoena at a time when his attendance will be sought, it may issue a material witness order, adjudging him a material witness and fixing bail to secure his future attendance.

3. A material witness order must be executed as follows:

(a) If the bail is posted and approved by the court, the witness must, as provided in subdivision two of section 510.40 of this part, be released and be permitted to remain at liberty; provided that, where the bail is posted by a person other than the witness himself, he may not be so released except upon his signed written consent thereto;

(b) If the bail is not posted, or if though posted it is not approved by the court, the witness must, as provided in subdivision two of section 510.40 of this part, be committed to the custody of the sheriff.