

REFERENCE TITLE: material witnesses; juveniles; release conditions

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1259

Introduced by
Senator Gray C

AN ACT

AMENDING SECTION 13-4085, ARIZONA REVISED STATUTES; RELATING TO MATERIAL WITNESSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-4085, Arizona Revised Statutes, is amended to
3 read:

4 13-4085. Release or detention of material witness: depositions

5 A. If it appears from an affidavit filed by a party that the testimony
6 of a person is material in a criminal proceeding pursuant to section 13-2319
7 and if it is shown that it may become impracticable to secure the presence of
8 the person by subpoena because of the immigration status of the person, the
9 court may order the temporary detention of the person and treat the person
10 according to the release provisions under section 13-3967 OR, IF THE PERSON
11 IS A JUVENILE, ACCORDING TO THE RELEASE PROVISIONS UNDER RULE 28 (c), ARIZONA
12 RULES OF PROCEDURE FOR THE JUVENILE COURT. A material witness may not be
13 detained because of the inability of the witness to comply with any condition
14 of release if the testimony of the witness can be secured adequately by
15 deposition and if further detention of the witness is not necessary to
16 prevent a failure of justice. The release of a material witness may be
17 delayed for a reasonable period of time until the deposition of the witness
18 can be taken pursuant to this section or the Arizona rules of criminal
19 procedure.

20 B. A material witness may be detained by a law enforcement agency. If
21 the material witness is a juvenile, the material witness may be detained in a
22 juvenile detention facility or a jail pursuant to section 8-305. A witness
23 shall not be detained for more than twenty-four hours unless an affidavit is
24 filed with the court pursuant to subsection A of this section.

25 C. A material witness who is being detained pursuant to subsection A
26 of this section may be kept in a physically separate section or be
27 administratively segregated from any person who is charged with, adjudicated
28 delinquent for or convicted of a criminal offense.

29 D. On the motion of any party or a material witness who has been
30 detained pursuant to subsection A of this section, the court may order the
31 examination of the material witness unless the material witness is the
32 defendant or a person who is excluded by rule 39(b), Arizona rules of
33 criminal procedure, on oral deposition. The deposition shall be noticed and
34 taken pursuant to rule 15.3, Arizona rules of criminal procedure.

35 E. The witness may be detained for a period of up to seven days after
36 entry of the order, except that if at any time during the period of
37 detainment it becomes reasonably feasible to conduct the examination, the
38 examination shall be conducted immediately and the court may order the
39 witness to be released immediately after signing the deposition under oath,
40 waiving the signature or otherwise affirming the factual accuracy of the
41 matters set forth in the deposition.

42 F. A deposition that is taken pursuant to this section may be used at
43 trial and at any pretrial proceeding pursuant to rule 19.3, Arizona rules of
44 criminal procedure.