

REFERENCE TITLE: material witness; detention; depositions

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1618

Introduced by
Senator Verschoor

AN ACT

AMENDING TITLE 13, CHAPTER 38, ARTICLE 22, ARIZONA REVISED STATUTES, BY
ADDING SECTION 13-4085; 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. Title 13, chapter 38, article 22, Arizona Revised Statutes,
3 is amended by adding section 13-4085, to 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, THE COURT MAY ORDER THE ARREST OF THE PERSON AND
9 TREAT THE PERSON ACCORDING TO THE RELEASE PROVISIONS UNDER SECTION 13-3967.
10 A MATERIAL WITNESS MAY NOT BE DETAINED BECAUSE OF THE INABILITY OF THE
11 WITNESS TO COMPLY WITH ANY CONDITION OF RELEASE IF THE TESTIMONY OF THE
12 WITNESS CAN BE SECURED ADEQUATELY BY DEPOSITION AND IF FURTHER DETENTION OF
13 THE WITNESS IS NOT NECESSARY TO PREVENT A FAILURE OF JUSTICE. THE RELEASE OF
14 A MATERIAL WITNESS MAY BE DELAYED FOR A REASONABLE PERIOD OF TIME UNTIL THE
15 DEPOSITION OF THE WITNESS CAN BE TAKEN PURSUANT TO THIS SECTION OR THE
16 ARIZONA RULES OF CRIMINAL PROCEDURE.

17 B. A MATERIAL WITNESS MAY BE DETAINED BY A LAW ENFORCEMENT AGENCY OR
18 IN A SECURE FACILITY OR JAIL, EXCEPT THAT IF THE MATERIAL WITNESS IS A
19 JUVENILE, THE MATERIAL WITNESS SHALL BE DETAINED IN A JUVENILE DETENTION
20 FACILITY. A MATERIAL WITNESS WHO IS DETAINED IN A JAIL OR A JUVENILE
21 DETENTION FACILITY SHALL BE KEPT IN A PHYSICALLY SEPARATE SECTION FROM ANY
22 PERSON WHO IS CHARGED WITH, ADJUDICATED DELINQUENT FOR OR CONVICTED OF A
23 CRIMINAL OFFENSE.

24 C. ON THE MOTION OF ANY PARTY OR A MATERIAL WITNESS WHO HAS BEEN
25 DETAINED PURSUANT TO SUBSECTION A OF THIS SECTION, THE COURT MAY ORDER THE
26 EXAMINATION OF THE MATERIAL WITNESS UNLESS THE MATERIAL WITNESS IS THE
27 DEFENDANT OR A PERSON WHO IS EXCLUDED BY RULE 39(b), ARIZONA RULES OF
28 CRIMINAL PROCEDURE, ON ORAL DEPOSITION. THE DEPOSITION SHALL BE NOTICED AND
29 TAKEN PURSUANT TO RULE 15.3, ARIZONA RULES OF CRIMINAL PROCEDURE.

30 D. THE WITNESS MAY BE DETAINED FOR A PERIOD OF SEVEN DAYS AFTER ENTRY
31 OF THE ORDER IF THE DEFENDANT TO THE ACTION IS IN CUSTODY OR FOR A PERIOD OF
32 FIFTEEN DAYS AFTER THE ENTRY OF THE ORDER IF THE DEFENDANT IS OUT OF CUSTODY.
33 IF AT ANY TIME DURING THE PERIOD OF DETAINMENT IT IS POSSIBLE TO CONDUCT THE
34 EXAMINATION, THE EXAMINATION SHALL BE CONDUCTED AND THE WITNESS SHALL BE
35 RELEASED IMMEDIATELY.

36 E. THE COURT MAY ORDER THAT A MATERIAL WITNESS WHO IS DETAINED AND WHO
37 GIVES A DEPOSITION PURSUANT TO THIS SECTION BE RELEASED AFTER THE WITNESS
38 SIGNS THE DEPOSITION UNDER OATH.

39 F. A DEPOSITION THAT IS TAKEN PURSUANT TO THIS SECTION MAY BE USED AT
40 TRIAL AND AT ANY PRETRIAL PROCEEDING PURSUANT TO RULE 19.3, ARIZONA RULES OF
41 CRIMINAL PROCEDURE.