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**IN THE SUPREME COURT  
STATE OF ARIZONA**

STATE OF ARIZONA,

Appellee,

v.

AARON BRIAN GUNCHES,

Appellant.

No. CR-13-0282-AP

Maricopa County Superior Court

No. CR2003-038541-001

**APPENDICES IN SUPPORT  
OF MARICOPA COUNTY  
ATTORNEY'S OFFICE  
AMICUS CURIAE BRIEF**

***State v. Aaron Gunches***  
**CR 13-0282-AP**  
**Appendices**

- Appendix A: Arizona Penal Code (1901)
- Appendix B: Arizona Penal Code (1913)
- Appendix C: Arizona Revised Code (1928)
- Appendix D: Arizona Code (1939)
- Appendix E: Arizona Revised Statutes Annotated (1956)
- Appendix F: Arizona Rules of Criminal Procedure (1956)
- Appendix G: Arizona Revised Statutes (1973)
- Appendix H: Ariz. State Bar Comm. On Crim. Law, Ariz. Prop. R. Crim. P. (1972)
- Appendix I: *Minutes of Meeting before the H. Commity on Jud. on March 10, 1994, 41st Leg., 2d Reg. Sess.*

# **APPENDIX A**

BY AUTHORITY OF THE LEGISLATIVE  
ASSEMBLY.

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THE  
REVISED STATUTES  
OF  
ARIZONA TERRITORY

CONTAINING ALSO

THE LAWS PASSED BY THE TWENTY-FIRST LEGISLATIVE  
ASSEMBLY, THE CONSTITUTION OF THE UNITED  
STATES, THE ORGANIC LAW OF ARIZONA  
AND THE AMENDMENTS OF CON-  
GRESS RELATING THERETO.

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1901

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COLUMBIA, MISSOURI  
PRESS OF E. W. STEPHENS  
1901

BY AUTHORITY OF THE LEGISLATIVE  
ASSEMBLY

THE  
REVISED STATUTES  
OF  
ARIZONA TERRITORY

Entered according to Act of Congress in the year 1901, by the  
TERRITORY OF ARIZONA,

In the office of the Librarian of Congress, at Washington.

THE LAW PASSED BY THE FIRST LEGISLATIVE  
ASSEMBLY, THE LEGISLATION OF THE TERRITORY  
STATES THE GREAT LAW OF ARIZONA  
AND THE AGREEMENTS OF 1848  
HEREIN CONTAINED

1901



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AT THE TERRITORY OF ARIZONA  
LIBRARY

which said crime is triable, shall be unable to furnish bail for his appearance at the same, and shall for that reason remain in custody for a period of sixty days or over, upon his conviction, the court may, in its discretion, remit from the sentence imposed upon said person, the time he has been so confined and imprisoned previous to his trial and conviction: *Provided*, That any person who has furnished bail and been at liberty under such bail, shall not be entitled to the exemption provided in this act, for the time he has been at liberty under such bail, but shall only apply to persons who have been actually confined.

## CHAPTER II.

### THE EXECUTION.

Warrant for execution of judgment.

**1019.** When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment and no other warrant or authority is necessary to justify or require its execution.

Fine.

**1020.** If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action.

Fine and imprisonment.

**1021.** If the judgment is for imprisonment, or a fine, and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

Delivery to territorial prison.

**1022.** If the judgment is for imprisonment in the territorial prison, the sheriff of the county must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the territorial prison. He must also deliver to the warden the certified copy of the judgment, and take from the warden a receipt for the defendant.

Death warrant.

**1023.** When the judgment of death is rendered, a warrant, signed by the judge, and attested by the clerk, under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment and appoint a day on which the judgment shall be executed, which shall not be less than thirty nor more than sixty days from the time of the judgment.

Court must notify governor of death sentence.

**1024.** The clerk of a court at which a conviction requiring judgment of death shall have been had, shall, immediately after the con-

viction, transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

1025. The governor may thereupon require the opinion of the justices of the supreme court and the attorney general, or any of them, upon the statement so furnished.

The governor may require legal opinions.

1026. No judge, court or officer other than the governor, can suspend the execution of a judgment of death, except the sheriff, as provided in the seven succeeding sections, unless an appeal be taken.

Who may suspend execution.

1027. If, after judgment of death, there be good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of twelve persons to inquire into the supposed insanity, and shall give immediate notice thereof to the district attorney.

Insane person not to be executed.

1028. The district attorney shall attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by that court.

District attorney may attend insane case.

1029. A certificate of the inquisition shall be signed by the jurors and the sheriff, and filed with the clerk of the court in which the conviction was had.

Certificate of inquisition.

1030. If it be found by the inquisition that the defendant is sane, the sheriff shall execute the judgment; but if it be found that he is insane, the sheriff shall suspend the execution of the judgment until he receives a warrant from the judge of the court in which the judgment was rendered, directing the execution of the judgment.

Sheriff may suspend execution.

1031. If the inquisition find that the defendant is insane the sheriff must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

Sheriff must notify governor of insanity of prisoner.

1032. If there is good reason to suppose that a female against whom a judgment of death is rendered, is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the district attorney of the county, and the provisions of sections 1028 and 1029 apply to the proceedings upon the inquisition.

Inquisition into pregnancy of woman convict.

1033. If it is found by the inquisition that the female is not pregnant, the sheriff must execute the judgment; if it is found that she is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the governor. When the governor is satis-

May suspend judgment.

fied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

When judgment has not been executed at set time.

**1034.** If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction was had upon the application of the district attorney, must order the defendant to be brought before it, or, if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the sheriff execute the judgment at a specified time. The sheriff must execute the judgment accordingly.

Hanging.

**1035.** The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

Where execution takes place.

**1036.** A judgment of death must be executed within the walls or yard of a jail, or some convenient private place in the county. The sheriff of the county must be present at the execution, and must invite the presence of a physician, the district attorney of the county, and at least twelve reputable citizens to be selected by him; and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

Who may attend.

Return upon death warrant.

**1037.** After the execution, the sheriff must make a return upon the death warrant, showing the time, mode and manner in which it was executed.

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## CHAPTER III.

### APPEALS.

Territory may appeal.

**1038.** In all criminal actions the territory may appeal to the supreme court on questions of law alone, and shall be taken, if from a judgment, within one year from its rendition, and from an order, ruling or otherwise, within twenty (20) days after the same is made. The district attorney, without summons or notice, shall pray the appeal during the term and the clerk shall make a transcript of the record,

# **APPENDIX B**

BY AUTHORITY OF THE LEGISLATURE

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THE  
REVISED STATUTES  
OF  
ARIZONA  
1913.

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PENAL CODE.

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COMPILED BY  
SAMUEL L. PATTEE  
CODE COMMISSIONER

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PHOENIX, ARIZONA  
THE McNEIL COMPANY  
1913

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By the  
STATE OF ARIZONA.

The demurrer to the indictment or information, if any was filed, and a copy of the order disallowing or overruling such demurrer as entered in the minutes of the court;

A copy of the plea of the defendant to the indictment or information entered in the minutes of the court;

A copy of the minutes of any challenge which may have interposed to the panel of the trial jury or to an individual juror, and the proceedings thereon;

A copy of the minutes of the trial;

All of the bills of exception, if any filed, and all such affidavits in support thereof as may have been filed;

All charges or instruction asked of or given by the court or refused to be given by the court, and the endorsement thereon;

A copy of the verdict of the jury;

Any motion for new trial filed in the court, or a copy of such motion, if oral, entered in the minutes of the court, and a copy of the decision of the court upon such motion, together with all affidavits used upon such motion; all the statements of facts filed as provided in this code, and all affidavits filed in support thereof;

All affidavits regarding misconduct of jurors;

A copy of the judgment;

A copy of all orders made in the cause before judgment;

A copy of any motion in arrest of judgment and the decision of the court thereon, as entered in the minutes of the court;

Such record shall form the transcript on appeal, if appeal is taken.

Sec. 1016, P. C.  
1901.

**1131.** All judgments rendered by the various superior courts of this state, sentencing any person or persons to confinement in the state prison, shall specify the time of the commencement of the term of said confinement.

Sec. 1017, P. C.  
1901.

**1132.** If the defendant have been convicted of two or more offenses before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

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## CHAPTER II.

### THE EXECUTION.

Par. 1019, Sec.  
1. Ch. 28, Laws  
1909.  
Sec. 1213, P. C.  
Cal.

**1133.** When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment

and no other warrant or authority is necessary to justify or require its execution.

**1134.** If the judgment is for a fine alone, with or without imprisonment, execution may be issued thereon as on a judgment in a civil action.

Par. 1020, Sec.  
1, Chap. 28, Laws  
1909.  
Sec. 1214, P. C.  
Cal.

Dunbar vs. Territory, 5 Ariz. 184—50 Pac. 30.

**1135.** If the judgment is for imprisonment, or a fine and imprisonment, until it be paid, the defendant must forthwith be committed to the custody of the proper officer and by him detained until the judgment is complied with. Where, however, the court has suspended sentence, or where, after imposing sentence, the court has suspended the execution thereof and placed the defendant on probation, as provided in section 1126 of the penal code, the defendant, if over the age of eighteen years, must forthwith be placed under the care and supervision of the probation officer of the court committing him, until the expiration of the period of probation and the compliance with the terms and conditions of the sentence, or of the suspension thereof. Where, however, the probation has been terminated as provided in section 1126 of the penal code, and the suspension of the sentence, or the execution revoked, and the judgment pronounced, the defendant must forthwith be committed to the custody of the proper officer and be detained until the judgment be complied with.

Sec. 1215, P. C.  
Cal.

Dunbar vs. Territory, 5 Ariz. 184—50 Pac. 30.

**1136.** If the judgment is for imprisonment in the state prison, the sheriff of the county must, upon receipt of a certified copy thereof, take and deliver the defendant to the superintendent of the state prison. He must also deliver to the superintendent the certified copy of the judgment, and take from the superintendent a receipt for the defendant.

Par. 1022, Sec.  
1, Ch. 28, Laws  
1909.  
Par. 1216, P. C.  
Cal.

**1137.** When a judgment of death is rendered, a warrant, signed by the judge, and attested by the clerk, under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than sixty nor more than ninety days from the time of judgment, and must direct the sheriff to deliver the defendant within ten days from the time of judgment, to the superintendent of the state prison of this state, for execution.

Par. 1023, Sec.  
1, Ch. 20, Laws  
1909.  
Sec. 217, P. C.  
Cal.

Par. 1032, Sec.  
1, Ch. 28, Laws  
1909.

**1138.** The clerk of the court at which a conviction requiring judgment of death shall have been had, must immediately after the conviction, transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

Par. 1024, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1218, P. C.  
Cal.

**1139.** The governor may thereupon require the opinion of the justices of the supreme court and the attorney general, or any of them, upon the statement so furnished.

Par. 1025, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1219, P. C.  
Cal.

Par. 1026, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1220, P. C.  
Cal.

**1140.** No judge, court, or officer, other than the governor, can suspend the execution of a judgment of death, except the superintendent of the state prison, to whom the condemned person is delivered for execution, as provided in the six succeeding sections, unless an appeal is taken.

Par. 1027, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1221, P. C.  
Cal.

**1141.** If, after the delivery to the superintendent for execution, there is good reason to believe that a defendant, under judgment of death, has become insane, the superintendent must call such fact to the attention of the county attorney of the county in which the prison is situated, whose duty it is to immediately file in the superior court of such county a petition, stating the conviction and judgment and the fact that the defendant is believed to be insane, and asking that the question of his sanity be inquired into. Thereupon the court must at once cause to be summoned and empaneled from the regular jury list of the county, a jury of twelve persons to hear such inquiry.

Par. 1028, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1222, P. C.  
Cal.

**1142.** The county attorney must attend the hearing and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

Par. 1029, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1223, P. C.  
Cal.

**1143.** The verdict of the jury must be entered upon the minutes, and thereupon the court must make and cause to be entered an order reciting the fact of such inquiry and the result thereof, and when it is found that the defendant is insane the order must direct that he be taken to the state asylum for the insane, and there kept in safe confinement until his reason is restored.

Par. 1030, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1224, P. C.  
Cal.

**1144.** If it be found that the defendant is sane, the superintendent must proceed to execute the judgment as specified in the warrant; if it is found that the defendant is insane, the superintendent must suspend the execution, and transmit a certified copy of the order mentioned in the last section to the governor, and deliver the defendant, together with a certified copy of such order, to the medical superintendent of the asylum named in such order. When the defendant recovers his reason, the superintendent of such asylum must certify that fact to the governor, who must thereupon issue to the superintendent his warrant, appointing a day for the execution of the judgment.

Par. 1031, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1225, P. C.  
Cal.

**1145.** If there is good reason to believe that a female against whom a judgment of death is rendered, is pregnant, such proceedings must be had as are provided in section 1141, except that instead of a jury as therein provided, the court may summon three disinterested physicians of good standing in their profession to inquire into the supposed pregnancy, who shall, in the presence of the court, but with

closed doors if requested by the defendant, examine the defendant and hear any evidence that may be produced, and make a written finding and certificate of their conclusion, to be approved by the court and spread upon the minutes. The provisions of section 1142 apply to the proceedings upon such inquiry.

**1146.** If it be found that the female is not pregnant, the superintendent must execute the judgment; if it is found that she is pregnant, the superintendent must suspend the execution of the judgment, and transmit a certified copy of the finding and certificate to the governor. When the governor receives from the superintendent a certificate that the defendant is no longer pregnant, he must issue to the superintendent his warrant, appointing a day for the execution of the judgment.

Par. 1032, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1226, P. C.  
Cal.

**1147.** If for any reason, other than the pendency of an appeal, a judgment of death has not been executed, and it remains in force, the court in which the conviction is had, on the application of the county attorney of the county in which the conviction is had, must order the defendant to be brought before it, or if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the superintendent of the state prison, to whom the sheriff is directed to deliver the defendant, execute the judgment at a specified time. The superintendent must execute the judgment accordingly. From an order directing and fixing the time for the execution of a judgment, as herein provided, there is no appeal.

Par. 1033, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1227, P. C.  
Cal., as modified.

**1148.** The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

Par. 1034, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1226, P. C.  
Cal.

**1149.** A judgment of death must be executed within the walls of the state prison. The superintendent of the state prison where the execution is to take place must be present at the execution and must invite the presence of a physician, the attorney general of the state, and at least twelve reputable citizens, to be selected by him; and he shall at the request of the defendant, permit such clergymen, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers, as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

Par. 1035, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1229, P. C.  
Cal.

**1150.** After the execution, the superintendent must make a return upon the death warrant to the court by which the judgment was rendered, showing the time, mode and manner in which it was executed.

Par. 1036, Sec.  
1, Ch. 28, Laws  
1909.  
Sec. 1230, P. C.  
Cal.

# **APPENDIX C**

PREFACE

# The Revised Code of Arizona 1928

PUBLISHED BY THE AUTHORITY  
OF THE STATE

CODIFIED AND REVISED  
WITH HISTORICAL DATA

BY

F. C. STRUCKMEYER  
Code Commissioner  
Phoenix, Arizona

ANNOTATED AND INDEXED

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The  
Revised Code of Arizona  
1928

PUBLISHED BY THE AUTHORITY  
OF THE STATE

WITH HISTORICAL DATA  
CODIFIED AND REVISED

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PHOENIX, ARIZONA

are controlling alike in criminal cases, and the certificate of the trial judge to the reporter's transcript of the proceedings or to a statement of facts covering them is a prerequisite to the examination thereof. *Molina v. Territory*, (1908), 12 Ariz. 14, 95 Pac. 102.

**§ 5113. Commencement of imprisonment must be specified.** All judgments rendered by a superior court, sentencing any person to confinement in the state prison, shall specify the time of the commencement of the term of said confinement. (§ 1131, P. C. '13, rev.)

See 8 Cal. Jur. 467; 8 R. C. L. 231.

**§ 5114. Judgment where more than one conviction.** If the defendant has been convicted of two or more offenses before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses, or that they run concurrently. (§ 1132, P. C. '13, rev.)

See 8 Cal. Jur. 468; 8 R. C. L. 240.

#### Article 2. The execution.

**§ 5115. Certified copy of judgment is warrant.** When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment and no other warrant or authority is necessary to justify or require its execution. (§ 1133, P. C. '13.)

See notes under § 3585, supra.  
See 8 Cal. Jur. 482.

**§ 5116. Execution on judgment for fine.** If the judgment is for a fine alone, or with or without imprisonment, execution may be issued thereon as on a judgment in a civil action. (§ 1134, P. C. '13.)

See 12 Cal. Jur. 516.

**§ 5117. Fine and imprisonment; suspended sentence.** If the judgment is for imprisonment, or a fine and imprisonment, until it be paid, the defendant must forthwith be committed to the custody of the proper officer and by him detained until the judgment is complied with. Where, however, the court has suspended sentence, or where, after imposing sentence, the court has suspended the execution thereof and placed the defendant on probation, the defendant must forthwith be placed under the care and supervision of the probation officer of the court committing him, until the expiration of the period of probation and the compliance with the terms and conditions of the sentence, or of the suspension thereof. Where, however, the probation has been terminated or revoked, and the judgment pronounced, the defendant must forthwith be committed to the custody of the proper officer and

be detained until the judgment be complied with. (§ 1135, P. C. '13, rev.)

Power to change time for commencement of sentence. 3 A. L. R. 1572.  
See 8 Cal. Jur. 483.

**§ 5118. Delivery to prison.** If the judgment is for imprisonment in the state prison, the sheriff of the county must, upon receipt of a certified copy thereof take and deliver the defendant to the superintendent of the state prison, and deliver to the superintendent the certified copy of the judgment, and take from the superintendent a receipt for the defendant. (§ 1136, P. C. '13.)

Imprisonment is legal where the commitment which is a certified copy of the judgment, fully shows the character of the court rendering the judgment, the names of the judge and clerk, and the date of the judgment, although such judgment does not contain the usual recitals. *In re Waldrip*, (1883), 1 Ariz. 482.

**§ 5119. Death warrant.** When a judgment of death is rendered, a warrant, signed by the judge, and attested by the clerk, under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than sixty nor more than ninety days from the time of judgment, and must direct the sheriff to deliver the defendant within ten days from the time of judgment, to the superintendent of the state prison of this state, for execution. (§ 1137, P. C. '13; repealed Init. Meas. p. 4, L. '17; re-enacted by Init. Meas. p. 17, L. '19.)

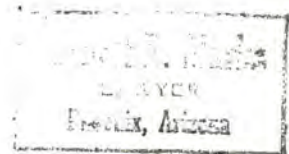
See 8 Cal. Jur. 484.

**§ 5120. Statement of judgment transmitted to governor.** The clerk of the court at which a judgment of death has been entered, must immediately after the judgment, transmit to the governor a statement of the conviction and judgment, and of the testimony given at the trial. The governor may thereupon require the opinion of the attorney general upon the statement so furnished. (§ 1138-9, P. C. '13, cons.)

**§ 5121. Suspension of death sentence.** No judge, court, or officer, other than the governor, can suspend the execution of a judgment of death, except the superintendent of the state prison, to whom the condemned person is delivered for execution, as provided in the six succeeding sections, unless an appeal is taken. (§ 1140, P. C. '13.)

See notes under § 5122, infra.

The interdiction in this section is absolute, and under it a superior judge is precluded from issuing a writ of habeas corpus after affirmance of judgment of conviction by the supreme court, even when it is



contended that the supreme court violated the Fourteenth Amendment of the United States Constitution and the state constitution. *State v. Superior Court*, (1923), 25 Ariz. 226, 215 Pac. 538.

§ 5122. **Insanity inquiry of defendant under death sentence.** If, after the delivery to the superintendent for execution, there is good reason to believe that a defendant, under judgment of death, has become insane, the superintendent must call such fact to the attention of the county attorney of the county in which the prison is situated, whose duty it is to immediately file in the superior court of such county a petition, stating the conviction and judgment and the fact that the defendant is believed to be insane, and asking that the question of his sanity be inquired into. Thereupon the court must at once cause to be summoned and impaneled from the regular jury list of the county, a jury of twelve persons to hear such inquiry. (§ 1141, P. C. '13, re-enacted Init. Measure, p. 17, L. '19.)

Cited as P. C. 1913, §§ 1141-1143, without construction or application. *Ex parte Faltin*, (1927), Ariz. ...., 55 A. L. R. 436, 254 Pac. 477.

The superintendent should make known his belief that the prisoner is insane at a time long enough before the date fixed for the execution of the death warrant, so that the judicial inquiry provided for may be had before the death warrant becomes functus officio, or at least in time to secure a reprieve. *State v. Sims*, (1915), 17 Ariz. 410, 415, 153 Pac. 451.

The act required of the superintendent in this section does not have the effect of suspending the death warrant. *State v. Sims*, (1915), 17 Ariz. 410, 414, 153 Pac. 451.

Insanity supervening after conviction and sentence of death. 49 A. L. R. 804.

See 8 Cal. Jur. 485.

§ 5123. **Duty of county attorney on inquiry.** The county attorney must attend the hearing and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court (§ 4, id.)

P. C. 1913, § 1142, cited without construction or application. *State v. Sims*, (1915), 17 Ariz. 410, 414, 153 Pac. 451.

§ 5124. **Verdict insane; judgment.** The verdict of the jury must be entered upon the minutes, and thereupon the court must make and cause to be entered an order reciting the fact of such inquiry and the result thereof, and when it is found that the defendant is insane the order must direct that he be taken to the state asylum for the insane, and there kept in safe confinement until his reason is restored. (§ 5, id.)

§ 5125. **Verdict sane, execution; subsequent proceedings.** If it be found that the defendant is sane, the superintendent must pro-

ceed to execute the judgment as specified in the warrant; if it is found that the defendant is insane, the superintendent must suspend the execution, and transmit a certified copy of the order mentioned in the last section to the governor and deliver the defendant, together with a certified copy of such order, to the medical superintendent of the asylum named in such order. When the defendant recovers his reason, the superintendent of such asylum must certify that fact to the governor, who must thereupon issue to the superintendent his warrant, appointing a day for the execution of the judgment. (§ 6, id.)

See notes under § 3585, supra.

It is only upon the verdict of the jury to the effect that the person is insane that the superintendent is authorized to suspend the execution. He has no power to determine the question of the prisoner's sanity or insanity. *State v. Sims*, (1915), 17 Ariz. 410, 414, 153 Pac. 451.

§ 5126. **Inquiry into pregnancy of woman under death sentence.** If there is good reason to believe that a female against whom a judgment of death is rendered, is pregnant, such proceedings must be had as are provided in Section 5122 hereof, except that instead of a jury as therein provided, the court may summon three disinterested physicians of good standing in their profession to inquire into the supposed pregnancy, who shall, in the presence of the court, but with closed doors if requested by the defendant, examine the defendant and hear any evidence that may be produced, and make a written finding and certificate of their conclusion, to be approved by the court and spread upon the minutes. The provisions of Section 5123 hereof apply to the proceedings upon such inquiry. (§ 7, id., re-enacting 1145, P. C. '13.)

See 8 Cal. Jur. 486.

§ 5127. **Proceedings subsequent to inquiry.** If it be found that the female is not pregnant, the superintendent must execute the judgment; if it is found that she is pregnant, the superintendent must suspend the execution of the judgment, and transmit a certified copy of the finding and certificate to the governor. When the governor receives from the superintendent a certificate that the defendant is no longer pregnant, he must issue to the superintendent his warrant, appointing a day for the execution of the judgment. (§ 8, id., re-enacting 1146, P. C. '13.)

§ 5128. **Resentence where judgment of death unexecuted.** If for any reason other than the pendency of an appeal, a judgment of death has not been executed, and it remains in force, the court in which the conviction is had, on the application of the county attorney of the county in which the conviction is had, must order

the defendant to be brought before it, or if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the superintendent of the state prison, to whom the sheriff is directed to deliver the defendant, execute the judgment at a specified time. The superintendent must execute the judgment accordingly. From an order directing and fixing the time for the execution of a judgment, as herein provided there is no appeal. (§ 9, *id.*, re-enacting 1147, P. C. '13.)

See notes under § 3585, *supra*.

P. C. 1913, § 1147, cited without construction or application. *Villalobo v. State*, (1915), 17 Ariz. 261, 262, 151 Pac. 946; *Peralta v. Sims*, (1916), 18 Ariz. 79, 156 Pac. 96; *Chavez v. Sims*, (1916), 18 Ariz. 80, 156 Pac. 97; *Perez v. Sims*, (1916), 18 Ariz. 81, 156 Pac. 97.

Laws 1919, p. 19, § 9, cited without construction or application. *State ex rel. Galbraith v. Superior Court*, (1921), 22 Ariz. 452, 197 Pac. 537; *State v. Superior Court*, (1923), 25 Ariz. 226, 215 Pac. 538.

Where the time fixed for the execution of the judgment was passed because of reprieves granted by the Governor, the superior court may proceed under this section and specify a time for executing the judgment. *Rodriguez v. Sims*, (1916), 18 Ariz. 74, 196 Pac. 94.

Under this section, no appeal lies from an order fixing the date of execution of sentence on a defendant convicted of murder of the first degree, after the date first fixed has expired, where execution of the sentence was stayed by appeal. *Torres v. State*, (1920), 21 Ariz. 401, 188 Pac. 877.

Effect of permitting day fixed for execution to pass without carrying out sentence. 34 A. L. R. 314. See 8 Cal. Jur. 487.

**§ 5129. Execution by hanging.** The punishment of death must be inflicted by hanging the defendant by the neck until he is dead. (§ 10, *id.*, re-enacting 1148, P. C. '13.)

Manner of inflicting death sentence as cruel or unusual punishment. 30 A. L. R. 1452. See 8 Cal. Jur. 488; 8 R. C. L. 264.

**§ 5130. Place of execution; who may be present.** A judgment of death must be executed within the walls of the state prison. The superintendent of the state prison where the execution is to take place must be present at the execution and must invite the presence of a physician, the attorney general of the state, and at least twelve reputable citizens to be selected by him; and he shall at the request of the defendant, permit such clergymen, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution nor can any person under age be allowed to witness the same. (§ 11, *id.*, re-enacting 1149, P. C. '13.)

**§ 5131. Return upon death warrant.** After the execution, the superintendent must make a return upon the death warrant to the court by which the judgment was rendered, showing the time, mode and manner in which it was executed. (§ 12, *id.*, re-enacting 1150, P. C. '13.)

**§ 5132. Disposal of body for scientific research.** The bodies, or portions thereof, of persons executed at the state prison, and not claimed by relatives or friends within twenty-four hours after death, may be disposed of for scientific purposes by the superintendent of the prison, with the consent of the governor, to any recognized institution for scientific research. (§ 1, Ch. 5, L. '25, rev.)

# **APPENDIX D**

# ARIZONA CODE

1939

Containing the  
GENERAL LAWS OF ARIZONA  
ANNOTATED

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#### Collateral References.

Commitment, power of court to set aside sentence after. 70 A. L. R. 822.

Effect of delay in taking defendant into custody after conviction and sentence. 72 A. L. R. 1271.

See 8 Cal. Jur. 482.

**44-2302. Execution of sentence imposing a fine.**—If the sentence imposes a fine with or without imprisonment execution may be issued thereon as on a judgment in a civil action. [Rules Cr. Proc., § 397.]

#### Compiler's Note.

This section is substantially the same as Rev. Code 1928, § 5116.

**Comparative Legislation.** Execution of sentence imposing a fine:

Cal. Deering's Pen. Code 1937, § 1214.

Nev. Comp. Laws 1929, § 11063.

Ore. Code 1930, § 13-1138.

Utah. Rev. Stat. 1933, § 105-37-2.

Wash. Rem. Comp. Stat. 1922, § 2201.

### NOTES TO DECISIONS

#### In General.

Sentence to pay fine, but providing no alternative of imprisonment on default, creates merely civil judgment to be collected in like manner as other civil judg-

ments. *Smith v. State*, 37 Ariz. 262, 293 Pac. 23.

#### Collateral Reference.

See 12 Cal. Jur. 516.

**44-2303. Fine and imprisonment—Suspended sentence.**—If the judgment is for imprisonment, or a fine and imprisonment, until it be paid, the defendant must forthwith be committed to the custody of the proper officer and by him detained until the judgment is complied with. Where, however, the court has suspended sentence, or where, after imposing sentence, the court has suspended the execution thereof and placed the defendant on probation, the defendant must forthwith be placed under the care and supervision of the probation officer of the court committing him, until the expiration of the period of probation and the compliance with the terms and conditions of the sentence, or of the suspension thereof. Where, however, the probation has been terminated or revoked, and the judgment pronounced, the defendant must forthwith be committed to the custody of the proper officer and be detained until the judgment be complied with. [P. C. 1901, § 1021; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1135; rev., R. C. 1928, § 5117.]

#### Compiler's Note.

The first sentence of this section is superseded by § 44-2301.

**Comparative Legislation.** Fine and imprisonment—Suspended sentence:

Cal. Deering's Pen. Code 1937, § 1215.

#### Cross-Reference.

General provisions concerning suspension of sentence and probation, § 44-2229 et seq.

#### Collateral References.

Power to change time for commencement of sentence. 3 A. L. R. 1572.

See 8 Cal. Jur. 483.

**44-2304. Warrant of execution on sentence of death—Time of execution—Duty of sheriff.**—When sentence of death is pronounced the court pronouncing sentence shall immediately commit the defendant to the custody of the sheriff and shall sign and deliver to the sheriff a warrant addressed to the superintendent of the state prison, attested by the clerk under the seal of the court, stating the judgment and sentence

and appointing a week, the first day of which shall not be less than sixty [60] days nor more than ninety [90] days from the date on which sentence was pronounced, within which sentence shall be executed and commanding the superintendent to execute the sentence within the week appointed. The sheriff shall as soon as practicable deliver the defendant together with the warrant to the said superintendent and shall take a receipt for the defendant and make a return thereof to the court. [Rules Cr. Proc., § 398.]

**Compiler's Note.**

The prior law, Rev. Code 1928, § 5119, is set out here as a note:

**5119. Death warrant.**—When a judgment of death is rendered, a warrant, signed by the judge, and attested by the clerk, under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than sixty [60] nor more than ninety [90] days from the time of judgment, and must direct the sheriff to deliver the defendant within ten [10] days from the time of judgment, to the

superintendent of the state prison of this state, for execution. [P. C. 1901, § 1023; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1137; Laws 1919 (Init. Meas.), p. 17; R. C. 1928, § 5119.]

**Comparative Legislation.** Warrant of execution on sentence of death—Time of execution—Duty of sheriff:

Cal. Deering's Pen. Code 1937, § 1217.

N. Mex. Stat. 1929, § 35-321.

Ore. Code 1930, § 13-1140.

Utah. Rev. Stat. 1933, § 105-37-5.

Wash. Rem. Comp. Stat. 1922, § 2210.

**Collateral Reference.**

See 8 Cal. Jur. 484.

**44-2305. Court to transmit statement to the governor.**—When sentence of death is pronounced the court pronouncing the sentence shall on the governor's request immediately cause to be transmitted to the governor a certified copy of the judgment and sentence and a transcript of the evidence given at the trial. [Rules Cr. Proc., § 399.]

**Compiler's Notes.**

The prior law, Rev. Code 1928, § 5120, is set out here as a note:

**5120. Statement of judgment transmitted to governor.**—The clerk of the court at which a judgment of death has been entered, must immediately after the judgment, transmit to the governor a statement of the conviction and judgment, and of the testimony given at the trial. The governor may thereupon require the opinion of the attorney-general upon the statement so furnished. [P. C.

1901, §§ 1024, 1025; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, §§ 1138, 1139; cons., R. C. 1928, § 5120.]

The last sentence of Rev. Code 1928, § 5120 may not be superseded.

**Comparative Legislation.** Court to transmit statement to the governor:

Cal. Deering's Pen. Code 1937, §§ 1218, 1219.

Nev. Comp. Laws 1929, § 11067.

N. Mex. Stat. 1929, § 35-322.

Utah. Rev. Stat. 1933, § 105-37-6.

**44-2306. Execution of sentence of death—Who may suspend.**—The execution of a sentence of death shall not be suspended or stayed, apart from the stay incident to an appeal, except by the governor. [Rules Cr. Proc., § 400.]

**Compiler's Note.**

The prior law, Rev. Code 1928, § 5121, is set out here as a note:

**5121. Suspension of death sentence.**—No judge, court, or officer, other than the governor, can suspend the execution of a judgment of death, except the superintendent of the state prison, to whom the condemned person is delivered for execution, as provided in the six succeeding sections [§§ 5115-5120], unless

an appeal is taken. [P. C. 1901, § 1026; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1140; R. C. 1928, § 5121.]

**Comparative Legislation.** Execution of sentence of death—Who may suspend:

Cal. Deering's Pen. Code 1937, §§ 1220-1222.

Nev. Comp. Laws 1929, § 11068.

Ore. Code 1930, § 13-801.

Utah. Rev. Stat. 1933, § 105-37-8.

## DECISIONS UNDER PRIOR LAW

**In General.**

This paragraph places the power of suspending the execution of a judgment of death in the governor, meaning thereby that the governor, upon request of the board of pardons and paroles, may relieve the condemned person, and in the superintendent of the state prison on the conditions and for the reasons set forth "in the six succeeding sections." *State v. Sims*, 17 *Ariz.* 410, 153 *Pac.* 451.

The only instances in which a judgment of death may be suspended, except upon reprieve by the governor, arise where a prisoner may have become in-

sane after delivery to prison superintendent, or if a female prisoner is pregnant. *State ex rel. Murphy v. Superior Court*, 25 *Ariz.* 226, 215 *Pac.* 538.

The interdiction in this section is absolute, and under it a superior judge is precluded from issuing a writ of habeas corpus after affirmance of judgment of conviction by the Supreme Court, even when it is contended that the Supreme Court violated the fourteenth amendment of the United States Constitution and the state constitution. *State ex rel. Murphy v. Superior Court*, 25 *Ariz.* 226, 215 *Pac.* 538.

**44-2307. Proceedings when person under sentence of death appears to be insane.**—If there is a reasonable ground to believe that a defendant under sentence of death has become insane since he was sentenced the superintendent of the state prison shall immediately notify the governor thereof who shall suspend execution of the sentence until he issues a warrant for its execution. On suspending sentence the governor shall appoint a commission consisting of two [2] competent disinterested physicians to examine into the defendant's mental condition. The commission so appointed may call and examine witnesses and compel their attendance. The commission shall report its finding to the governor. The physicians constituting the commission shall be allowed such fees as the governor deems reasonable, which fees shall be paid by the state. [Rules Cr. Proc., § 401.]

**Compiler's Notes.**

The prior law, Rev. Code 1928, §§ 5122, 5123, is set out here as notes:

**5122. Insanity inquiry of prisoner under death sentence.**—If, after the delivery to the superintendent for execution, there is good reason to believe that a prisoner, under judgment of death, has become insane, the superintendent must call such fact to the attention of the county attorney of the county in which the prison is situated, whose duty it is to immediately file in the superior court of such county a petition, stating the conviction and judgment and the fact that the prisoner is believed to be insane, and asking that the question of his sanity be inquired into. Thereupon the court must at once cause to be summoned and impaneled from the regular jury list of the county, a jury of twelve [12] persons to hear such inquiry. Whenever such an inquiry shall be had, the clerk of the court where such inquiry is held, shall prepare a statement of all the costs incurred by the county for such inquiry, properly certified to by the judge of said court, which statement shall be forwarded to the board of directors of state institutions for their approval, and after such approval said

board shall cause the amount of said costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such trial was had. [P. C. 1901, § 1027; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1141; Laws 1919 (Init. Meas.), § 3, p. 17; R. C. 1928, § 5122; Laws 1931, ch. 55, § 1, p. 131.]

**5123. Duty of county attorney on inquiry.**—The county attorney must attend the hearing and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court. [P. C. 1901, § 1028; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1142; Laws 1919 (Init. Meas.), § 4, p. 17; R. C. 1928, § 5123.]

Note that Laws 1919, p. 17 is an initiative measure and, under Const., art. 4, pt. 1, § 1, par. 6, could not be repealed or amended by the legislature.

**Cross-References.**

Acquittal for insanity, §§ 44-1916, 44-1917.

Insanity as grounds for withholding sentence, §§ 44-2217, 44-2218.

Insanity before or during trial, §§ 44-1701—44-1706.

Insanity of prisoners in county jail for misdemeanors, § 47-217.

Insanity of prisoners in state prison, § 47-106.

#### Section to Section Reference.

This section is referred to in §§ 44-2308, 44-2309, 44-2316.

**Comparative Legislation.** Proceedings when person under sentence of death appears to be insane:

Cal. Deering's Pen. Code 1937, §§ 1221, 1222.

#### DECISIONS UNDER PRIOR LAW

##### Cited:

In re Faltin, 31 Ariz. 465, 254 Pac. 477, 55 A. L. R. 436.

##### In General.

The superintendent should make known his belief that the prisoner is insane at a time long enough before the date fixed for the execution of the death warrant, so that the judicial inquiry provided for may be had before the death warrant becomes *functus officio*, or at least in time to secure a reprieve. *State v. Sims*, 17 Ariz. 410, 153 Pac. 451.

The act required of the superintendent in this section does not have the effect

of suspending the death warrant. *State v. Sims*, 17 Ariz. 410, 153 Pac. 451.

The only instances in which judgment may be suspended, except upon a reprieve by the governor, arise where a prisoner may have become insane after delivery to the superintendent of the prison, or the prisoner, if a female, is pregnant. *State ex rel. Murphy v. Superior Court*, 25 Ariz. 226, 215 Pac. 538.

##### Collateral References.

Insanity supervening after conviction and sentence of death. 49 A. L. R. 804. See 8 Cal. Jur. 485.

**44-2308. Proceedings if defendant is found sane.**—If the governor after receiving the report of the commission provided for in section 401 [§ 44-2307] decides that the defendant is sane, he shall issue a warrant to the superintendent directing him to execute the sentence at the time designated in said warrant. [Rules Cr. Proc., § 402.]

##### Compiler's Notes.

In the rules as published the word "in" in the last line appeared as "is," and the word "warrant" was spelled "warant."

The prior law, Rev. Code 1928, § 5125, is set out here as a note:

**5125. Verdict sane, execution—Subsequent proceedings.**—If it be found that the defendant is sane, the superintendent must proceed to execute the judgment as specified in the warrant; if it is found that the defendant is insane, the superintendent must suspend the execution, and transmit a certified copy of the order mentioned in the last section to the governor and deliver the defendant, together with a certified copy of such order, to the medical superintendent of the asylum named in such order. When the defendant recovers his reason, the superintendent of such asylum must certify that fact to the governor, who

must thereupon issue to the superintendent his warrant, appointing a day for the execution of the judgment. [P. C. 1901, §§ 1030, 1031; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1144; Laws 1919 (Init. Meas.), § 6, p. 17; R. C. 1928, § 5125.]

Part of Rev. Code 1928, § 5125 is superseded by § 44-2309.

Note that Laws 1919, p. 17 is an initiative measure and, under Const., art. 4, pt. 1, § 1, par. 6, could not be repealed or amended by the legislature.

#### Section to Section Reference.

This section is referred to in § 44-2316.

**Comparative Legislation.** Proceedings if defendant is found sane:

Cal. Deering's Pen. Code 1937, § 1224.

Nev. Comp. Laws 1929, § 11072.

N. Mex. Stat. 1929, § 35-327.

#### DECISIONS UNDER PRIOR LAW

##### Cited:

In re Faltin, 31 Ariz. 465, 254 Pac. 477, 55 A. L. R. 436.

##### In General.

It is only upon the verdict of the jury to the effect that the person is insane

that the superintendent is authorized to suspend the execution. He has no power to determine the question of the prisoner's sanity or insanity. *State v. Sims*, 17 Ariz. 410, 153 Pac. 451.

The superintendent has no power to determine the question of the prisoner's sanity or insanity. He can, if he has good reason to believe that the prisoner has become insane since his delivery to the prison, only call such fact to the attention of the county attorney in time to secure a reprieve. *State v. Sims*, 17 Ariz. 410, 153 Pac. 451.

The only instances in which judgment may be suspended except upon a reprieve

by the governor, arise where a prisoner may have become insane after delivery to the superintendent of the prison, or the prisoner, if a female, is pregnant. *State ex rel. Murphy v. Superior Court*, 25 Ariz. 226, 215 Pac. 538.

#### Collateral Reference.

Judicial declaration of sanity, made after alleged offense but before acquittal on ground of insanity at time of offense, as affecting duty of court to commit defendant to asylum for insane. 88 A. L. R. 1084.

**44-2309. Proceedings if defendant is found insane—Recovery of sanity.**—If the governor after receiving the report of the commission provided for in section 401 [§ 44-2307] decides that the defendant is insane, he shall take steps to have the defendant committed to the state hospital for the insane. If thereafter the proper officer of such institution is of the opinion that the defendant is sane he shall report this fact to the governor, whereupon the governor shall appoint a commission consisting of two [2] competent disinterested physicians to determine whether the defendant has been restored to sanity. The commission shall have the same powers and be allowed the same fees as are provided for in section 401 [§ 44-2307]. If, after the report of the commission, the governor decides that the defendant has been restored to sanity he shall cause the defendant to be returned to the custody of the superintendent and shall issue a warrant to the superintendent directing him to execute the sentence at a time designated in said warrant. [Rules Cr. Proc., § 403.]

#### Compiler's Notes.

For prior law, see compiler's notes, § 44-2308.

The prior law, Rev. Code 1928, § 5124, is set out here as a note:

**5124. Verdict insane — Judgment.** — The verdict of the jury must be entered upon the minutes, and thereupon the court must make and cause to be entered an order reciting the fact of such inquiry and the result thereof, and when it is found that the defendant is insane the order must direct that he be taken to the state asylum for the insane, and there kept in safe confinement until his reason is restored. [P. C. 1901, § 1029; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1143; Laws 1919 (Init. Meas.), § 5, p. 17; R. C. 1928, § 5124.]

Note that Laws 1919, p. 17 is an initiative measure and, under Const., art. 4, pt. 1, § 1, par. 6, could not be repealed or amended by the legislature.

#### Cross-Reference.

See notes, § 44-2308.

#### Section to Section Reference.

This section is referred to in § 44-2316.

**Comparative Legislation.** Proceedings if defendant is found insane—Recovery of sanity:

Cal. Deering's Pen. Code 1937, §§ 1223, 1224.

Nev. Comp. Laws 1929, §§ 11072, 11073.

N. Mex. Stat. 1929, § 35-327.

Utah. Rev. Stat. 1933, § 105-37-12.

**44-2310. Proceedings when person under sentence of death appears to be pregnant.**—If there is ground to believe that a defendant under sentence of death is pregnant the superintendent shall immediately notify the governor thereof who shall suspend execution of the sentence until he issues a warrant for the execution of the sentence. On suspending the sentence the governor shall appoint a commission

consisting of two [2] competent disinterested physicians to examine the defendant as to such pregnancy. The commission shall report its finding to the governor. The physicians constituting the commission shall be allowed such fees as the governor deems reasonable, which fees shall be paid by the state. [Rules Cr. Proc., § 404.]

#### Compiler's Notes.

The prior law, Rev. Code 1928, § 5126, is set out here as a note:

**5126. Inquiry into pregnancy of woman under death sentence.**—If there is good reason to believe that a female against whom a judgment of death is rendered, is pregnant, such proceedings must be had as are provided in section 5122 hereof, except that instead of a jury as therein provided, the court may summon three [3] disinterested physicians of good standing in their profession to inquire into the supposed pregnancy, who shall, in the presence of the court, but with closed doors if requested by the defendant, examine the defendant and hear any evidence that may be produced, and make a written finding and certificate of their conclusion, to be approved by the court and spread upon the minutes. The provisions of section 5123 hereof apply to the proceedings upon such inquiry. [P. C. 1901, § 1032; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1145;

Laws 1919 (Init. Meas.), § 7, p. 17; R. C. 1928, § 5126.]

Note that Laws 1919, p. 17 is an initiative measure and, under Const., art. 4, pt. 1, § 1, par. 6, could not be repealed or amended by the legislature.

#### Cross-Reference.

Pregnancy as grounds for withholding sentence of death, §§ 44-2217, 44-2220.

#### Section to Section Reference.

This section is referred to in §§ 44-2311, 44-2316.

**Comparative Legislation.** Proceedings when person under sentence of death appears to be pregnant:

Cal. Deering's Pen. Code 1937, §§ 1222, 1225, 1226.

Nev. Comp. Laws 1929, §§ 11074-11076.

N. Mex. Stat. 1929, §§ 35-324, 35-325, 35-328, 35-329.

Utah. Rev. Stat. 1933, §§ 105-37-10, 105-37-11, 105-37-13, 105-37-14.

## NOTES TO DECISIONS

#### In General.

The only instances in which judgment may be suspended except upon a reprieve by the governor, arise where a prisoner may have become insane after delivery to the superintendent of the prison, or

the prisoner, if a female, is pregnant. State ex rel. Murphy v. Superior Court, 25 Ariz. 226, 215 Pac. 538.

#### Collateral Reference.

See 8 Cal. Jur. 486.

**44-2311. Proceedings if defendant found not pregnant.**—If the governor after receiving the report of the commission provided for in section 404 [§ 44-2310] decides that the defendant is not pregnant he shall issue a warrant to the superintendent directing him to execute the sentence at the time designated in said warrant. [Rules Cr. Proc., § 405.]

#### Compiler's Notes.

The prior law, Rev. Code 1928, § 5127, is set out here as a note:

**5127. Proceedings subsequent to inquiry.**—If it be found that the female is not pregnant, the superintendent must execute the judgment; if it is found that she is pregnant, the superintendent must suspend the execution of the judgment, and transmit a certified copy of the finding and certificate to the governor. When the governor receives from the superintendent a certificate that the defendant

is no longer pregnant, he must issue to the superintendent his warrant, appointing a day for the execution of the judgment. [P. C. 1901, § 1033; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1146; Laws 1919 (Init. Meas.), § 8, p. 17; R. C. 1928, § 5127.]

Part of Rev. Code 1928, § 5127 is superseded by § 44-2312.

Note that Laws 1919, p. 17 is an initiative measure and, under Const., art. 4, pt. 1, § 1, par. 6, could not be repealed or amended by the legislature.

**Cross-Reference.**

See note, § 44-2310. *State ex rel. Murphy v. Superior Court*, 25 Ariz. 226, 215 Pac. 538.

**Section to Section Reference.**

This section is referred to in § 44-2316.

**Comparative Legislation.** See comparative legislation, § 44-2310.

**44-2312. Duty of superintendent when defendant ceases to be pregnant—Duty of governor.**—When the superintendent is satisfied that a defendant under sentence of death who has been found to be pregnant is no longer pregnant he shall so notify the governor who, upon receiving the notice, shall issue to the superintendent a warrant directing him to execute the sentence at a time designated in said warrant. [Rules Cr. Proc., § 406.]

**Compiler's Note.**

For prior law, see compiler's notes, § 44-2311.

**Section to Section Reference.**

This section is referred to in § 44-2316.

**Comparative Legislation.** See comparative legislation, § 44-2310.

**44-2313. Sentence of death unexecuted because of appeal—Duty of court on affirming.**—When a judgment or sentence of death has been affirmed on appeal after the time appointed for the execution of the sentence the appellate court shall fix a new time for the execution of the sentence and shall issue a warrant to the superintendent directing him to execute the sentence at a time designated in said warrant. [Rules Cr. Proc., § 407.]

**Compiler's Notes.**

The prior law, Rev. Code 1928, § 5151, is set out here as a note:

**5151. Judgment of death affirmed, proceedings.**—When an appeal is taken from a judgment imposing the punishment of death, and the time fixed by such judgment for the execution thereof shall have passed before the decision of the Supreme Court on such appeal, if the judgment is affirmed the Supreme Court shall, in its judgment, fix the time when the original sentence of death shall be executed, and a copy of such judgment certified by the clerk of the Supreme Court shall be delivered to the superintendent of the state prison, and shall be sufficient authority to him for the execution of the defendant at the time therein specified. [P. C. 1913, § 1177; Laws 1919, ch. 146, § 10, p. 244; R. C. 1928; § 5151.]

Except for this provision, the judgment is enforced by the trial court, see § 44-2542.

**Section to Section Reference.**

This section is referred to in § 44-2316.

**Comparative Legislation.** Sentence of death unexecuted because of appeal—Duty of court on affirming:

Cal. Deering's Pen. Code 1937, § 1227.

**Cited:**

*Kermeen v. State*, 17 Ariz. 263, 151 Pac. 738; *Faltin v. State*, 17 Ariz. 278, 151 Pac. 952 (prior law); *Leonard v. State*, 17 Ariz. 293, 151 Pac. 947; *State v. Sims*, 17 Ariz. 410, 153 Pac. 451; *Martin v. State*, 22 Ariz. 275, 196 Pac. 673; *State v. Superior Court*, 22 Ariz. 452, 197 Pac. 537; *Lauterio v. State*, 23 Ariz. 15, 201 Pac. 91; *Roman v. State*, 23 Ariz. 67, 201 Pac. 551; *Flowers v. State*, 27 Ariz. 70, 229 Pac. 1028; *Hernandez v. State*, 43 Ariz. 424, 32 Pac. (2d) 18.

**Collateral Reference.**

See 3 Cal. Jur. 1024.

**44-2314. Sentence of death unexecuted at time appointed for reasons other than appeal.**—If for any reason a sentence of death has not been executed at the time appointed and there appears to be no legal ground why it was not executed, the court which pronounced the sentence or any judge thereof or any court having appellate jurisdiction in capital cases, or any judge thereof, upon application by the attorney-general or by the county attorney of the county in which the conviction was

had shall, if the defendant is in custody, order the official in whose custody he is to bring him before the court or judge issuing the order, or, if the defendant is at large, shall issue a warrant for his arrest directing that he be brought before the court or judge issuing the warrant. Upon his appearance the judge or court shall inquire into the circumstances and if no legal ground is found why the sentence should not be executed, the judge or court shall issue a warrant to the superintendent directing him to execute the sentence at a time designated in said warrant. [Rules Cr. Proc., § 408.]

#### Compiler's Notes.

The prior law, Rev. Code 1928, § 5128, is set out here as a note:

5128. **Resentence where judgment of death unexecuted.**—If for any reason other than the pendency of an appeal, a judgment of death has not been executed, and it remains in force, the court in which the conviction is had, on the application of the county attorney of the county in which the conviction is had, must order the defendant to be brought before it, or if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the superintendent of the state prison, to whom the sheriff is directed to deliver the defendant, execute the judgment at a specified time. The superintendent must

execute the judgment accordingly. From an order directing and fixing the time for the execution of a judgment, as herein provided there is no appeal. [P. C. 1901, § 1034; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1147; Laws 1919 (Init. Meas.), § 9, p. 17; R. C. 1928, § 5128.]

Note that Laws 1919, p. 17 is an initiative measure and, under Const., art. 4, pt. 1, § 1, par. 6, could not be repealed or amended by the legislature.

#### Section to Section Reference.

This section is referred in § 44-2316.

**Comparative Legislation.** Sentence of death unexecuted at time appointed for reasons other than appeal:

Cal. Deering's Pen. Code 1937, § 1227.

Nev. Comp. Laws 1929, § 11077.

N. Mex. Stat. 1929, §§ 35-330, 35-332.

Utah. Rev. Stat. 1933, § 105-37-15.

Wash. Rem. Comp. Stat. 1922, § 2222.

#### DECISIONS UNDER PRIOR LAW

##### Cited:

Peralta v. Sims, 18 Ariz. 79, 156 Pac. 96; Chavez v. Sims, 18 Ariz. 80, 156 Pac. 97; Perez v. Sims, 18 Ariz. 81, 156 Pac. 97; State ex rel. Galbraith v. Superior Court, 22 Ariz. 452, 197 Pac. 537; State ex rel. Murphy v. Superior Court, 25 Ariz. 226, 215 Pac. 538; In re Faltin, 31 Ariz. 465, 254 Pac. 477, 55 A. L. R. 436.

##### In General.

Where judgment of death is unexecuted, and time fixed for execution thereof has expired by reason of a reprieve, it becomes duty of sentencing court, on application of county attorney of county where conviction was had, to proceed hereunder and specify such time for the execution of said judgment as may seem proper to said court. Villalobo v. State, 17 Ariz. 261, 151 Pac. 946; Rodriguez v. Sims, 18 Ariz. 74, 156 Pac. 94.

Appellate court has power to rectify the wrong resulting from the issuance of a writ of habeas corpus causing a postponement of the execution of a death sentence made pursuant to this statute. State ex rel. Murphy v. Superior Court, 25 Ariz. 226, 215 Pac. 538.

##### Appeal.

Under this section, no appeal lies from an order fixing the date of execution of sentence on a defendant convicted of murder of the first degree, after the date first fixed has expired, where execution of the sentence was stayed by appeal. Torres v. State, 21 Ariz. 401, 188 Pac. 877.

##### Collateral References.

Effect of permitting day fixed for execution to pass without carrying out sentence. 34 A. L. R. 314.

See 8 Cal. Jur. 487.

**44-2315. Death penalty—Method of infliction.**—The penalty of death shall be inflicted by lethal gas. [Rules Cr. Proc., § 409.]

**Compiler's Note.**

Revised Code 1928, § 5129, providing for infliction of the death penalty by hanging, was superseded by the fore-

going section and by Ariz. Const., art. 22, § 22.

**Comparative Legislation.** Death penalty—Method of infliction:  
Cal. Deering's Pen. Code 1937, § 1226.

## DECISIONS UNDER PRIOR LAW

**In General.**

Initiative act which abolished death penalty for murder does not repeal general death penalty law nor does it pardon one previously convicted of murder. In re Faltin, 31 Ariz. 465, 254 Pac. 477, 55 A. L. R. 436.

Constitutional amendment prescribing lethal gas for execution of death penalty

was not violative of federal constitution as imposing cruel and unusual punishment. Hernandez v. State, 43 Ariz. 424, 32 Pac. (2d) 18.

**Collateral References.**

Manner of inflicting death sentence as cruel or unusual punishment. 30 A. L. R. 1452.

See 8 Cal. Jur. 488.

**44-2316. Sentence of death, where and when executed.**—The sentence of death shall be executed within the limits of the Arizona State Prison by the proper official, and, subject to the provisions of sections 401, 402, 403, 404, 405, 406, 407 and 408 [§§ 44-2307—44-2314], at the time designated in the original warrant. [Rules Cr. Proc., § 410.]

**Compiler's Note.**

See first sentence of § 44-2317.

**Comparative Legislation.** Sentence of death, where and when executed:

N. Mex. Stat. 1929, § 35-332.

Ore. Code 1930, § 13-1141.

Utah. Rev. Stat. 1933, § 105-37-17.

Wash. Rem. Comp. Stat. 1922, § 2214.

**44-2317. Place of execution—Who may be present.**—A judgment of death must be executed within the walls of the state prison. The superintendent of the state prison where the execution is to take place must be present at the execution and must invite the presence of a physician, the attorney-general of the state, and at least twelve [12] reputable citizens to be selected by him; and he shall at the request of the defendant, permit such clergymen, not exceeding two [2], as the defendant may name, and any persons, relatives or friends, not to exceed five [5], to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution nor can any person under age be allowed to witness the same. [P. C. 1901, § 1036; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1149; Laws 1919 (Init. Meas.), § 11, p. 17; R. C. 1928, § 5130.]

**Compiler's Note.**

The first sentence of this section is substantially the same as the first clause of § 44-2316.

**Comparative Legislation.** Place of execution—Who may be present:

Cal. Deering's Pen. Code 1937, § 1229.

**44-2318. Return of the warrant.**—Upon the execution of the sentence of death the superintendent shall make a return of the warrant with his doings thereon to the court which pronounced the sentence. [Rules Cr. Proc., § 411.]

**Compiler's Notes.**

The prior law, Rev. Code 1928, § 5131, is set out here as a note:

**5131. Return upon death warrant.**—After the execution, the superintendent must make a return upon the death warrant to the court by which the judgment

was rendered, showing the time, mode and manner in which it was executed. [P. C. 1901, § 1037; Laws 1909, ch. 28, § 1, p. 92; P. C. 1913, § 1150; Laws 1919 (Init. Meas.), § 12, p. 17; R. C. 1928, § 5131.]

Note that Laws 1919, p. 17 is an initiative measure and, under Const., art. 4, pt. 1, § 1, par. 6, could not be repealed or amended by the legislature.

**44-2319. Disposal of body for scientific research.**—The bodies, or portions thereof, of persons executed at the state prison, and not claimed by relatives or friends within twenty-four [24] hours after death, may be disposed of for scientific purposes by the superintendent of the prison, with the consent of the governor, to any recognized institution for scientific research. [Laws 1925, ch. 5, § 1, p. 12; rev., R. C. 1928, § 5132.]

## ARTICLE 24

### CERTIFICATION OF CASE

#### SECTION.

44-2401. When case to be certified to the appellate court.

**44-2401. When case to be certified to the appellate court.**—If upon a motion to quash an indictment or information or any count thereof or if after verdict or finding of guilty but before sentence any question of law shall arise which in the opinion of the trial court is so important and doubtful as to require the decision of the appellate court, the trial court may, if the defendant consents, certify the case to the appellate court so far as may be necessary to present the question of law arising therein, and thereupon all proceedings in the cause shall be stayed to await the decision of the appellate court. [Rules Cr. Proc., § 412.]

#### Section to Section Reference.

This section is referred to in § 44-2501.

**Comparative Legislation.** Return of the warrant:

Cal. Deering's Pen. Code 1937, § 1230.  
Nev. Comp. Laws 1929, § 11080.  
N. Mex. Stat. 1929, § 35-333.  
Ore. Code 1930, § 13-1139.  
Utah. Rev. Stat. 1933, § 105-37-19.  
Wash. Rem. Comp. Stat. 1922, § 2216.

**Comparative Legislation.** When case to be certified to the appellate court:

Minn. Mason's Stat. 1927, § 10756.  
Wis. Stat. 1937, § 358.08.

## ARTICLE 25

### APPEAL

#### SECTION.

44-2501. Appeal only method of review.  
44-2502. Who may appeal.  
44-2503. Parties—How designated.  
44-2504. Appeal by any one of several defendants.  
44-2505. Appeal as matter of right.  
44-2506. Appeal by defendant.  
44-2507. Cases appealed to superior court reviewable by Supreme Court.  
44-2508. Appeal by state.  
44-2509. When appeal to be taken by defendant.

#### SECTION.

44-2510. When appeal to be taken by state.  
44-2511. How appeal taken.  
44-2512. Notice to county attorney when defendant appeals.  
44-2513. Notice to defendant when state appeals.  
44-2514. Notice waived.  
44-2515. Specification of grounds of appeal.  
44-2516. Stay of execution when defendant appeals.

# **APPENDIX E**

ARIZONA  
SECRETARY

Secretary of State,

of the laws  
of the State, Annotated  
of the  
of the Third  
Legislature,  
General and  
Regular  
Sessions, the  
laws are on  
file in the  
office.

I have herewith set my  
Seal of the State of  
Arizona at the  
State Capitol, this 27th  
day of February  
1956

*Robert*

SECRETARY OF STATE.

# ARIZONA REVISED STATUTES

## ANNOTATED

*Prepared Under Legislative Authority  
Laws 1956, Chapter 129*

**Volume 5**

**Title 13**

**Criminal Code**

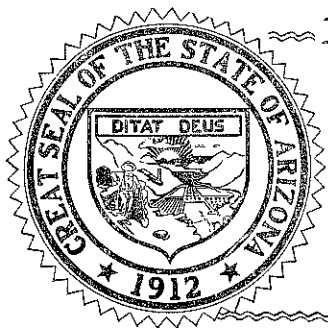
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WEST PUBLISHING CO.

# STATE OF ARIZONA

## OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA }  
STATE OF ARIZONA } ss.

*I* **WESLEY BOLIN**, *Secretary of State*,  
*do hereby certify that* The text of the laws  
contained in ARIZONA REVISED STATUTES, Annotated  
Edition, is a true and correct copy of the  
Arizona Revised Statutes enacted at the Third  
Special Session of the Twenty-Second Legislature,  
as amended and supplemented by the general and  
permanent laws enacted at the Second Regular  
Session of the Twenty-Second Legislature, the  
original or engrossed copies of which are on  
file and a matter of record in this office.



*In Witness Whereof I have hereunto set my  
hand and affixed the Great Seal of the State of  
Arizona, Done at Phoenix, the capital, this 27th  
day of August A.D. 1956*

*Wesley Bolin*

SECRETARY OF STATE.

ANNOTATIONS TO STATUTES

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8th Reprint—1975

§ 13-1655

CRIMINAL CODE

Tit. 13

§ 13-1655. **Persons present at execution of sentence of death; limitation**

The superintendent of the state prison shall be present at the execution of all death sentences and shall invite a physician, the attorney general and at least twelve reputable citizens of his selection to be present at the execution. The superintendent shall at the request of the defendant, permit clergymen, not exceeding two, whom the defendant names and any persons, relatives or friends, not to exceed five, to be present at the execution. The superintendent may invite such peace officers as he deems expedient to witness the execution. No persons other than those set forth in this section shall be present at the execution nor shall any minor be allowed to witness the execution.

**Source:**

§ 1036, P.C. '01, am., § 1, Ch. 28, L. '09; § 1149, P.C. '13; § 5130, R.C. '28; 44-2317, C. '39.

Adopted from California, see West's Pen.Code §§ 3603, 3605.

**Reviser's Note:**

The first sentence of R.C. 1928, § 5130 (44-2317, C. '39) is omitted as covered

**Historical Note**

by Rule 345 of the Rules of Criminal Procedure.

This section is an initiative measure amending P.C. 1913, § 1149. The effective date of the measure was December 5, 1918. See Laws 1919, Initiative and Referendum Measures, p. 20.

**Cross References**

Constitutional provision relating to capital punishment, see Const. art. 22, § 22.  
Definition of minor, see § 1-215.

§ 13-1656. **Return upon death warrant**

Upon the execution of a sentence of death, the superintendent of the state prison shall make a return upon the death warrant to the court which pronounced sentence, showing the time, mode and manner in which it was executed.

**Source:**

§ 1037, P.C. '01, am., § 1, Ch. 28, L. '09; § 1150, P.C. '13; § 5131, R.C. '28.

Adopted from California, see West's Ann.Pen.Code § 3607.

**Reviser's Note:**

This section is an initiative measure amending P.C. 1913, § 1150. The effective

**Historical Note**

date of the measure was December 5, 1918. See Laws 1919, Initiative and Referendum Measures, p. 20.

Rules Crim.Proc., § 411 (44-2318, C. '39) is omitted as covered by this section.

**Cross References**

Disposal of body of person executed for scientific research, see § 36-805.  
Warrant of execution, see Rules Cr.Proc. Rule 343.

## Notes of Decisions

See, also, Notes of Decisions under § 13-1715.

for dismissal of the appeal. *Baca v. State* (1916) 18 Ariz. 350, 161 P. 686.

## 1. In general

Under Pen.Code 1913, §§ 1164-1167, the failure of defendant in a criminal prosecution to file the abstract within the time specified by Pen.Code 1913, § 1163, and his failure to file a brief or prosecute the appeal, were insufficient grounds

On appeal by one convicted of manslaughter, the court must inquire into the case and decide it on the merits, as though it had been argued, though the appellant makes no appearance. *Fondren v. Territory* (1912) 14 Ariz. 49, 124 P. 654.

**§ 13-1720. Divestiture of jurisdiction of supreme court after remission of minute entry and decision; exception**

After a certified copy of the minute entry and a copy of the decision of the supreme court in a criminal appeal has been remitted to the trial court from which the appeal was taken, the supreme court shall have no further jurisdiction of the appeal, or of the proceedings thereon. All orders which may be necessary to carry the decision of the supreme court into effect shall be made by the court to which the copy of the minute entry and decision is remitted, except when a judgment or sentence of death has been affirmed on appeal after the time appointed for the execution of the sentence and the supreme court has fixed a new time for execution and issued a warrant to the superintendent of the state prison directing him to execute the sentence at the time designated in the warrant.

## Historical Note

## Source:

§ 1066, P.C. '01; § 1179, P.C. '13; § 5152, R.C. '28; 44-2549, C. '39. Adopted from California, see West's Ann.Pen.Code § 1265.

## Cross References

Execution of sentence, see Rules Cr.Proc. Rule 340 et seq.

**§ 13-1721. Fee of counsel assigned in criminal proceeding or insanity hearing on appeal**

When counsel is appointed by the court and represents the defendant in either a criminal proceeding or insanity hearing on appeal, he shall be paid by the county in which the court from which the appeal is taken presides. Compensation for such services rendered on appeal shall be such amount as the supreme court in its discretion deems reasonable, considering the services performed. Added Laws 1956, Ch. 7, § 1.

Effective July 14, 1956.

# **APPENDIX F**

**RULES OF  
CRIMINAL PROCEDURE**

**FOR THE**

**SUPERIOR COURTS OF ARIZONA**

**Promulgated**  
**by the**  
**Supreme Court of Arizona**  
**June 18, 1955**

*Effective January 1, 1956*

St. Paul, Minn.  
**WEST PUBLISHING CO.**

INDEX TO RULES  
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Ariz. Rules Crim. Proc.

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1. See Laws 193  
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2. See Laws 195  
lar Session, Chapter  
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EXECUTION OF SENTENCE

Rule 341

Rule

- 343. Warrant of execution on sentence of death; time of execution; duty of sheriff.
- 344. Resentence where sentence of death unexecuted.
- 345. Time and place of execution of sentence of death.

**Rule 340. Certified copy of sentence as warrant of authority to execute sentence**

A. When a sentence other than of death has been pronounced, a certified copy of the entry thereof shall be forthwith furnished to the officer whose duty it is to execute the sentence, and no other warrant or authority is necessary to justify or require its execution.

B. If the sentence is for imprisonment in the state prison, the sheriff of the county shall upon receipt of a certified copy thereof take and deliver the defendant and such certified copy to the superintendent of the state prison, and obtain from the superintendent a receipt for the defendant.

Source:

§§ 1019, 1022, P.C. '01, am., § 1, Ch. 28, L. '09; §§ 1133, 1136, P.C. '13; §§ 5115, 5118, R.C. '28, comb'd.

**Rule 341. Custody upon sentence of imprisonment; custody upon suspension of sentence**

A. If the sentence is for imprisonment, or a fine and imprisonment until the fine is paid, the defendant shall forthwith be committed to the custody of the proper officer for detention until the sentence is complied with.

B. When the court has suspended sentence, or when, after imposing sentence, the court has suspended the execution thereof and placed the defendant on probation, the defendant shall forthwith be placed under the supervision of the probation officer of the court committing him until the expiration of the period of probation and compliance with the terms and conditions of the sentence, or suspension thereof. When the probation has been revoked, and the sentence pronounced, the defendant shall forthwith be committed to the custody of the proper officer and be detained until the sentence is complied with.

Source:

§ 1021, P.C. '01, am., § 1, Ch. 28, L. '09; § 1135, P.C. '13; § 5117, R.C. '28; 44-2303, C. '39.

**Rule 342** RULES OF CRIMINAL PROCEDURE

**Rule 342.** Execution of sentence imposing fine

If the sentence imposes a fine with or without imprisonment, execution may be issued thereon as on a judgment in a civil action.

**Source:**

Rules Cr. Proc. § 397; 44-2302, C. '39.

**Rule 343.** Warrant of execution on sentence of death; time of execution; duty of sheriff

When a sentence of death is pronounced and entered, the court pronouncing sentence shall immediately commit the defendant to the custody of the sheriff and shall sign and deliver to the sheriff a warrant addressed to the superintendent of the state prison, attested by the clerk under the seal of the court, stating the judgment and sentence and appointing a day on which sentence is to be executed, which shall be not less than sixty nor more than ninety days from the date on which sentence was pronounced, and shall direct the sheriff to deliver the defendant within ten days from the date of sentence of death, together with the warrant, to the superintendent of the state prison for execution. The sheriff shall obtain a receipt for the defendant and make a return thereof to the court.

**Source:**

§ 1023, P.C. '01, am., § 1, Ch. 28, L. '09; § 1137, P.C. '13; § 5119, R.C. '28; Rules Cr. Proc. § 398; 44-2304, C. '39, in part, comb'd.

**Reviser's Note:**

R.C. 1928, § 5119, is an initiative measure effective December 5, 1918, which re-enacted § 1137, P.C. 1913. See Laws 1919, Initiative and Referendum Measures, pp. 17, 18.

**Rule 344.** Resentence where sentence of death unexecuted

If for any reason other than the pendency of an appeal, a sentence of death has not been executed and remains in force, the court in which the conviction is had, on the application of the county attorney of the county in which the conviction was had, shall order the defendant to be brought before it, or if he is at large, shall order the issuance of a warrant for his apprehension. Upon the defendant being brought before it, the court shall inquire into the facts, and if no legal reason exists for not executing the sentence, the court shall make an order that the superintendent of the state prison, to whom the sheriff shall be directed to deliver the defendant, execute the sentence at a specified time. The superintendent shall execute the

sentence ac  
ing and fix  
this Rule.

**Source:**

§ 1034, P.C.  
§ 1147, P.C.

**Rule 34**

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**Source:**

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Place of execu

**Rule**

346. When

**Rule 346**

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**Source:**

Rules Cr. Proc

**Rule**

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sentence accordingly. There shall be no appeal from an order directing and fixing the time for the execution of a sentence as provided by this Rule.

Source:

§ 1034, P.C. '01, am., § 1, Ch. 28, L. '09;  
§ 1147, P.C. '13; § 5128, R.C. '28.

Reviser's Note:

This Rule is an initiative measure effective December 5, 1918, which re-enacted § 1147, P.C. 1913. See Laws 1919, Initiative and Referendum Measures, pp. 17, 19.

**Rule 345. Time and place of execution of sentence of death**

The sentence of death shall be executed within the limits of the state prison as provided for and directed by the warrant.

Source:

Rules Cr. Proc. § 410; 44-2316, C. '39.

Cross References

Place of execution of sentence of death, see Const. art. 22, § 22.

**XXII. CERTIFICATION OF CASE**

Rule

346. When case to be certified.

**Rule 346. When case to be certified**

If upon a motion to quash an indictment or information or any count thereof, or if after verdict or finding of guilty but before sentence, any question of law arises which in the opinion of the trial court is so important and doubtful as to require the decision of the supreme court, the trial court may, if the defendant consents, certify the case to the supreme court so far as necessary to present the question of law arising therein, and thereupon all proceedings in the action shall be stayed to await the decision of the supreme court.

Source:

Rules Cr. Proc. § 412; 44-2401, C. '39.

**XXIII. APPEAL**

Rule

- 347. Designation of parties.
- 348. Time within which appeal may be taken by defendant.
- 349. Time within which appeal may be taken by state.
- 350. Notice of appeal.
- 351. Notice to county attorney and attorney general upon appeal by defendant.
- 352. Notice to defendant upon appeal by state.
- 353. Waiver of notice by appellee.



# **APPENDIX G**

ARIZONA  
REVISED STATUTES

ANNOTATED

*Prepared Under Legislative Authority  
Laws 1956, Chapter 129*

Volume 17

1973 Rules of Criminal Procedure

ST. PAUL, MINN.

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## JUDGMENT, SENTENCING, ETC. Rule 26.15

S.Ct. 2072, 395 U.S. 711, 23 L.Ed.2d 656 (1969). The Court in Simpson held that "punishment already exacted for an offense . . . [must be] fully 'credited' in imposing sentence upon a new conviction for the same offense." Simpson v. Rice, supra, at 718-19; see State v. Johnson, 105 Ariz. 21, 458 P.2d 955 (1969). In Pearce the Court held that if a person is re-sentenced to a more severe sentence:

. . . the factual data upon which the increased sentence is based must be made part of the record, so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal. North Carolina v. Pearce, supra, at 726.

### Notes of Decisions

#### I. In general

Fact that trial court during resentencing omitted asking defendant if there was any reason why his sentence

should not be pronounced did not necessitate second remand for resentencing. State v. Davis (1972) 108 Ariz. 75, 492 P.2d 1182.

## Rule 26.15 Special procedures upon imposition of a sentence of death

After imposing a sentence of death, the court shall order the clerk to file a notice of appeal from judgment and sentence.

### Comment

This rule is intended to supplement the automatic appeal in death cases provided by Rule 31.2(b). The Supreme Court has the duty to set the date of execution if the case is affirmed, see Rule 31.17(c): Appeal in death cases is virtually automatic.

### Historical Note

#### Derivation:

1956 Rules of Criminal Procedure, Rule 350.

Rules Cr.Proc. § 422, 44-2511, C. '39.

### Notes of Decisions

#### I. In general

Under Laws 1919, p. 17, Initiative Measures, § 9 (repealed) an express prohibition, no appeal lies from order of trial court fixing date of execution of sentence on defendant convicted of a capital offense after the date first fixed has expired; execution of sentence on that date having been stayed by appeal. Torres v. State (1920) 21 Ariz. 401, 188 P. 877.

Where "The State of Arizona" would be the style of the order to be made directing and fixing a time for the execution of a death sentence unexecuted by reason of reprieves, the defendants could not be in any way prejudiced by the alleged irregularity in the style of the warrant of execution previously issued. Rodriguez v. Sims (1916) 18 Ariz. 74, 156 P. 94.

## Rule 26.16 RULES OF CRIMINAL PROCEDURE

### Rule 26.16 Entry of judgment and sentence; warrant of authority to execute sentence

a. **Entry of Judgment and Sentence.** The judgment of conviction and the sentence thereon are complete and valid as of the time of their oral pronouncement in open court.

b. **Warrant of Authority.** The clerk of the court shall forthwith enter the exact terms of the judgment and sentence in the court's minutes. A certified copy, signed by the sentencing judge, shall be furnished to the appropriate officer and no other authority shall be necessary to carry into execution any sentence entered therein.

If the sentence is for death or imprisonment, the appropriate officer shall receive the defendant for execution of the sentence upon delivery to him of a signed, certified copy of the entry in the court's docket.

#### Comment

See Rule 31.17(c).

#### Historical Note

<b>Derivation:</b>	§§ 1019, 1021 to 1023, P.C. '01.
1956 Rules of Criminal Procedure, Rules 340 to 343.	§ 1, Ch. 28, L. '09.
Rules Cr.Proc. §§ 397, 398.	§§ 1133, 1135 to 1137, P.C. '13.
	§§ 5115, 5117 to 5119, R.C. '28.
	44-2302 to 44-2304, C. '39.

#### Constitutional Provisions

Article 22, § 16, provides: "It shall be unlawful to confine any minor under the age of eighteen years, accused or convicted of crime, in the same section of any jail or prison in which adult prisoners are confined. Suitable quarters shall be prepared for the confinement of such minors."

Article 22, § 22, provides: "The judgment of death shall be inflicted by administering lethal gas. The execution shall take place within the limits of the State prison."

#### Cross References

Return upon death warrant, see A.R.S. § 13-1656.  
Sentencing, generally, see A.R.S. § 13-1641 et seq.  
Stay of execution of sentence when defendant appeals, see Rule 31.6.

#### Notes of Decisions

In general 2  
Death warrant 6  
Definitions 3  
Minute entry 4  
Right to suspend 5  
Validity 1

#### 1. Validity

Court rules which are part of the system of criminal procedure are "law"

within meaning of Const. Art. 6, § 22 (repealed) that pleadings and proceedings in criminal causes shall be as provided by law, and hence Supreme Court's rule dealing with warrant of execution on sentence of death, time of execution, and duty of sheriff, was not obnoxious to said section. State ex rel. Conway v. Superior Court within and for Greenlee County (1943) 60 Ariz. 69, 131 P.2d 983.

## JUDGMENT, SENTENCING, ETC. Rule 26.16

### 2. In general

There was no violation of rights of defendant who had pleaded guilty to attempted robbery in revoking presentence bond, placing him in confinement, or in expediting time of sentence from ten months after judgment to five months. *State v. Quinn* (1969) 10 Ariz.App. 552, 460 P.2d 658.

Sentence to state penitentiary instead of state prison was not improper although state prison was the statutory place for felons to be incarcerated. *State v. Amey* (1968) 7 Ariz.App. 59, 436 P.2d 153.

Although practice in Arizona for judges in criminal cases to sign written sentence and for certified copy thereof, bearing name of the judge, to be forwarded to the penitentiary is an excellent and commendable practice, it is not essential to validity of the sentence and incarceration thereunder. *State v. Smith*, (1967) 6 Ariz.App. 393, 433 P.2d 44.

### 3. Definitions

Initiated measure that a death warrant must state the conviction and judgment and appoint a day on which judgment is to be executed, and Supreme Court's rule dealing with warrant of execution on sentence of death and providing that court should appoint a week for execution of the sentence, are in definite conflict, and the initiated measure should control, unless the initiated measure unduly hampers court, since the word "day" means a definite and specific 24 hours, while the word "week" can mean nothing but seven days of those periods. *State ex rel. Conway v. Superior Court within and for Greenlee County* (1943) 60 Ariz. 69, 131 P.2d 983.

### 4. Minute entry

All that was required to justify prison authorities in receiving and holding

convict until expiration of his sentence was certified copy of minute entry of sentence; and it was no ground for habeas corpus that commitment papers contained no date at which imprisonment was to begin. *Lyons v. State ex rel. Eyman* (1967) 5 Ariz.App. 364, 427 P.2d 345.

A certified copy of minute entry of judgment of conviction is the only instrument needed to justify prison authorities in receiving and holding defendant until sentence has expired or he is otherwise released according to law. *Anderson v. State* (1939) 54 Ariz. 387, 96 P.2d 281, 126 A.L.R. 501.

### 5. Right to suspend

Right to suspend imposition of sentence in criminal case is regulated by A.R.S. § 13-1657 and can only be exercised in accordance with terms of that section. *State v. Van Meter* (1968) 7 Ariz.App. 422, 440 P.2d 58.

### 6. Death warrant

Death warrant fixing a week and not a day on which sentence of death should be carried out was irregular and in violation of initiated measure on the subject, and county attorney should cause defendant to be brought before court in which conviction was had for issuance of a new death warrant in accordance with initiated measure. *State ex rel. Conway v. Superior Court within and for Greenlee County* (1943) 60 Ariz. 69, 131 P.2d 983.

Requirement of initiated measure that a day certain instead of a week certain be set for execution of a death sentence does not hamper a court unreasonably in the administration of justice, and hence Supreme Court's rule stating that court should set a week certain for execution of death sentence gives way to the initiated measure. *Id.*

APPEAL FROM SUPERIOR COURT **Rule 31.2**

**Rule 31.2** Notice of appeal; automatic appeal; joint appeals

a. **Filing the Notice of Appeal.** Unless a defendant has been sentenced to death, an appeal or cross-appeal shall be taken by filing a written notice of appeal with the clerk of the trial court, within the time allowed by Rule 31.3.

b. **Automatic Appeal When Defendant is Sentenced to Death.** When a defendant has been sentenced to death, the clerk, pursuant to Rule 26.15, shall file a notice of appeal on his behalf at the time of entry of judgment and sentence.

c. **Joint Appeals.** If 2 or more persons are entitled to appeal from a judgment or order of the Superior Court, and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in the appeal after filing separate timely notices of appeal, and proceed as in the case of a single appellant.

d. **Content of the Notice of Appeal.** The notice of appeal shall identify the order, judgment and sentence appealed from and shall, unless filed under Rule 31.2(b), be signed by the appellant or his attorney, if any, or by the prosecutor if the appeal or cross-appeal is taken by the state.

e. **Additional Information.** The appellant should attach to the notice of appeal:

- (1) The name and address of the defendant;
- (2) The name and address of the attorney for the defendant, if any;
- (3) The name and address (if known) of any co-defendant at trial; and,
- (4) Whether the defendant was represented by appointed counsel at the determination of guilt or at sentencing.

f. **Service of the Notice of Appeal**

(1) *When Defendant Appeals.* When a defendant appeals, the clerk of the trial court shall send a copy of the notice of appeal to the prosecutor of the county in which the defendant was tried, to the attorney general, to each co-defendant at trial who is not a joint-appellant and his counsel of record, if any, to the appropriate court reporter or reporters, and to the clerk of the proper Appellate Court.

(2) *When the State Appeals.* When the state appeals or cross-appeals, the clerk of the trial court shall send a copy of the notice of appeal to each defendant and his counsel of record, if any, to the appropriate court reporter or reporters and to the clerk of the proper Appellate Court.

## Rule 31.2 RULES OF CRIMINAL PROCEDURE

(3) *Notice of Right to Counsel.* The clerk shall include with any notice of appeal sent to a defendant, and shall send to a defendant filing notice of appeal *pro se*, a notice advising him of his rights to counsel under Rule 6.

(4) *Notice to the Appellate Court of Pending Post-Trial Motions.* The clerk shall include with the copy of the notice of appeal sent to the Appellate Court, a copy of any motion filed by any party under Rule 24 which has not yet been decided by the trial court.

(5) *Manner of Service.* The notice of appeal shall be sent to the defendant at his address of record or at his place of incarceration and to his counsel of record.

**g. Entry by the Clerk.** The clerk shall make an entry in the docket when a notice of appeal is filed and shall note whether the defendant had appointed counsel at the determination of guilt or at sentencing. He shall also enter in the docket the names and addresses of the parties to whom copies of the notice of appeal are mailed together with the date of mailing.

### Comment

This rule is intended to provide a simple means for taking appeals and to insure that all persons directly affected by the taking of an appeal are promptly notified. It is drawn from Federal Rules of Appellate Procedure 3.

**Rules 31.2(a) and (c).** As under the 1956 Arizona Rules of Criminal Procedure, Rule 350, the notice of appeal is filed with the clerk of the trial court. Section (c) is taken directly from Federal Rules of Appellate Procedure 3(b). Together with Rule 31.4(b), permitting consolidation of appeals, it is intended to encourage the taking of joint appeals in order to reduce the case load of the appellate court and the workload of clerks and court reporters.

**Rule 31.2(b).** Section (b), providing for automatic appeal, is similar to Cal.Penal Code § 1239(b) (West 1970), Ill. Ann. Stat. § 38:121-12(a) (Smith-Hurd 1964), and Ala. Code § 15:382(2) (1958).

**Rules 31.2(d) and (e).** Except for automatic appeals, only the signature of the appellant or his counsel and a statement of the judgment, sentence or order being appealed from is required for a proper notice of appeal. See 1956 Arizona Rules of Criminal Procedure, Rule 350. The other information is to aid service by the clerk and to expedite transcription of the record and appointment of counsel. See Rules 31.5 and 31.8(b) and (d). The term "determination of guilt" is defined in Rule 26.1(c).

**Rule 31.2(f).** The burden of advising other interested persons that an appeal has been filed is shifted from the parties to the clerk

## APPEAL FROM SUPERIOR COURT Rule 31.2

of the trial court. Cf. 1956 Arizona Rules of Criminal Procedure, Rules 351 and 352 and Federal Rules of Appellate Procedure 3(d).

A copy of the notice of appeal and attachment is sent to the court reporter or reporters who reported pretrial hearings, the trial or plea hearing, sentencing and any other superior court proceedings in the case, in order to alert them, at the earliest possible moment, of the need to prepare a transcript and to inform them whether or not the appeal is being taken by a person declared indigent under Rule 6. See Rule 31.2(e)(4). Rules 31.8(d) and (e) govern payment of the court reporter by non-indigent parties and Rule 31.5(a)(2) allows a person who did not proceed as an indigent prior to conviction to so proceed on appeal if he now qualifies.

Paragraph (4) is to provide notice to the appellate court of any post-trial motions then pending so that the court can exercise its power, under Rule 31.4, to stay the appeal. Rules 24.2(c) and 32.4 (b) provide for notice to the appellate court of any post-trial motions or petitions filed while an appeal is pending.

Service on counsel is required in addition to service on the defendant.

Service may be accomplished by ordinary mail and is complete upon mailing. See 1956 Arizona Rules of Civil Procedure 5(c).

**Rule 31.2(g).** The notation that the defendant has proceeded below as an indigent will automatically serve as authorization for him to proceed as an indigent on appeal unless the trial court orders otherwise. See Rule 31.5.

### Historical Note

#### Derivation:

1956 Rules of Criminal Procedure, Rules Cr.Proc. §§ 5, 422 to 424.  
Rules 5, 350 to 352. 44-106, 44-2511 to 44-2513, C. '39.

### Notes of Decisions

In general 1  
Bond 5  
Jurisdiction 3  
Purpose 2  
Several judgments 6  
Sufficiency of notice 4  
Waiver of notice 7

Appeal may be taken in Supreme Court by filing with clerk of superior court a notice, in writing, stating that appellant appeals from judgment, ruling or sentence. Application of Lopez (1965) 97 Ariz. 328, 400 P.2d 325.

It is Supreme Court's responsibility alone to decide whether appeal has been properly or timely perfected. *Id.*

Appeal process is covered by statutory provisions, and giving of notice of appeal rather than designation of court to which one desires to appeal is controlling. *State v. Mileham* (1965) 1 Ariz. App. 67, 399 P.2d 688, appeal transferred 100 Ariz. 402, 415 P.2d 104, appeal after remand 106 Ariz. 436, 477 P. 2d 526.

#### I. In general

In criminal matters, judgment is complete, valid, and appealable only when it is orally pronounced in open court and entered on clerk's minutes. *State v. Rendel* (1972) 18 Ariz.App. 201, 501 P.2d 42.

Trial court has inherent power to modify its own judgments and orders in criminal cases unless jurisdiction has been terminated by appeal. *Id.*

## Rule 31.2 RULES OF CRIMINAL PROCEDURE

### 2. Purpose

Object of notice of appeal is to advise opposite party that appeal has been taken from specific judgment in specific case. *State v. Good* (1969) 9 Ariz.App. 388, 452 P.2d 715.

### 3. Jurisdiction

Even if handwritten notice of appeal which defendant handed to trial judge immediately after initial sentencing could be regarded as having been filed with clerk of court at that time, it did not operate to divest trial court of jurisdiction to immediately thereafter correct its sentence where record showed that no order of conviction had been entered in clerk's minutes until after corrected sentence had been pronounced. *State v. Rendel* (1972) 18 Ariz.App. 201, 501 P.2d 42.

Proper filing of notice of appeal from judgment of conviction deprives trial court of jurisdiction in all matters not in furtherance of the appeal; however, for notice of appeal to have such result, it must be timely filed in accordance with rule pertaining to appeals. *Id.*

Defendant's presentation to trial judge immediately after initial sentence had been pronounced of handwritten notice of appeal and trial judge's ordering that it be filed did not divest trial judge of jurisdiction to immediately thereafter correct sentence where defendant had not requested immediate filing of the notice of appeal, no notation of filing was made on document either by trial judge or his deputy clerk at that time and file stamp of clerk indicating filing was dated on day following entry of the corrected sentence. *Id.*

Once a notice of appeal is filed, a trial court no longer has jurisdiction to rule upon any motion, except a motion in furtherance of the appeal. *State v. Churton* (1968) 9 Ariz.App. 16, 448 P.2d 888.

On perfection of appeal to Supreme Court by filing of notice, superior court loses all jurisdiction of case except to act in furtherance of appeal. *Application of Lopez* (1965) 97 Ariz. 328, 400 P.2d 325.

On filing of notice of appeal to Supreme Court, superior court had no further jurisdiction in criminal case, and its action in dismissing appeal and in

setting aside order granting leave to perfect appeal in forma pauperis was void. *Id.*

### 4. Sufficiency of notice

A written notice of appeal is jurisdictional, and an oral notice in open court is insufficient. *Hunter v. Territory* (1894) 4 Ariz. 197, 36 P. 175, appeal dismissed 4 Ariz. 300, 78 P. 1112; *May v. Territory* (1894) 4 Ariz. 197, 36 P. 175; *Howard v. Territory* (1894) 4 Ariz. 197, 36 P. 175; *Florez v. Territory* (1912) 14 Ariz. 343, 128 P. 49.

Though mere technical errors in notice of appeal, absent showing of prejudice to appellee, may not render it ineffective, such is not case where there is complete absence of notice. *State v. Good* (1969) 9 Ariz.App. 388, 452 P.2d 715.

Notice of appeal in writing, filed with clerk of trial court, is required in order to perfect appeal in criminal case. *State v. Johnson* (1955) 78 Ariz. 211, 277 P.2d 1020.

Where convicted defendant merely gave notice in open court that he intended to appeal, but no proper written notice of appeal was ever filed with clerk of court, reviewing court had no jurisdiction to entertain appeal. *Id.*

### 5. Bond

In case of criminal appeal, no bond is required, and appeal is perfected by filing of notice. *Application of Lopez* (1965) 97 Ariz. 328, 400 P.2d 325.

### 6. Several judgments

If separate judgments are rendered in separate proceedings, one notice of appeal does not suffice to bring up all judgments for review and this is true as to separate actions even where causes have been consolidated for purposes of trial. *State v. Good* (1969) 9 Ariz.App. 388, 452 P.2d 715.

Where state mailed copy of notice of appeal from order granting motion to quash indictments in consolidated hearing of 18 cases to attorneys of record of one of defendants, but there was complete absence of notice in rest of cases prior to expiration of time for appeal, court did not have jurisdiction to hear state's appeals as to other cases, though state attempted clarification after time for appeal had expired. *Id.*

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## APPEAL FROM SUPERIOR COURT Rule 31.3

### 7. Waiver of notice

If notice of appeal is served on attorney for appellee at time when there still would be time to correct deviation in service, and cognizance of appeal is evidenced by conduct directed toward processing record on appeal, such as designating additional portions of record, requirement of service upon appellee personally is thereby waived. *State v. Good* (1969) 9 Ariz.App. 388, 452 P.2d 715.

Generally, requirement of notice of appeal to appellee is not jurisdictional in sense that it may not be waived. *Id.*

Slight evidence may suffice to constitute waiver of defect as to notice of appeal when there is no showing of prejudice. *Id.*

Where state mailed copy of notice of appeal from order granting motion to quash defendant's indictment to defendant's attorneys of record and subsequently before 60 days had elapsed after entry of order defendant's attorneys filed designation of additional record on appeal, service of notice of appeal upon defendant was waived. *Id.*

### Rule 31.3 Time for taking appeal

The notice of appeal shall be filed with the clerk of the trial court within 20 days after the entry of judgment and sentence, except that:

a. A notice of cross-appeal may be filed within 20 days after service of the appellant's notice of appeal; and

b. A notice of delayed appeal shall be filed within 20 days after service of an order granting a delayed appeal under Rule 32.1(f).

#### Comment

This rule reduces the time in which an appeal may be taken from 60 to 20 days after entry of judgment and sentence and the time for filing a cross-appeal from 30 to 20 days after the filing of the notice of appeal. See Arizona Rules of Criminal Procedure, Rules 348, 349.

The entry of judgment and sentence is taken as a single benchmark for determination of the timeliness of an appeal, with 2 exceptions. For cross-appeals, the filing of the notice of appeal is the point from which the 20-day period will run. Cross-appeals are not required in every case. For delayed appeals, the service of the order is the benchmark. The order itself is not used to trigger the appellate process because it lacks the additional information accompanying the notice of appeal. See Rule 32.1(f).

#### Historical Note

##### Derivation:

1956 Rules of Criminal Procedure, Rules 348, 349. Rules Cr.Proc. §§ 420, 421, 44-2509, 44-2510, C. '39.

#### Notes of Decisions

In general 1  
Delayed appeal 3  
Revocation of probation 5  
Scope of review 4

Suspension of sentence 6  
Time of notice of appeal 2  
Waiver 7

**Rule 31.16** RULES OF CRIMINAL PROCEDURE

**Rule 31.16** Appeal by state is inoperative to stay order in favor of defendant

An appeal by the state is inoperative to stay order in favor of the defendant, except when the appeal is from an order granting a new trial or from an order granting a motion to suppress which directs the return of the evidence.

**Comment**

This provision is to prevent a defendant from being automatically held in custody upon appeal by the state. It is identical to the 1956 Arizona Rules of Criminal Procedure, Rule 359 except for the clause concerning orders directing return of evidence which has been suppressed, which was added to prevent destruction of the evidence pending appeal.

**Historical Note**

**Derivation:**

1956 Rules of Criminal Procedure, Rule 359. Rules Cr.Proc. § 432. 44-2521, C. '39.

**Rule 31.17** Disposition and ancillary orders

a. **Ancillary Orders.** The Appellate Court may issue such orders in aid of the proceedings as it deems necessary.

b. **Disposition, In General.** The Appellate Court may reverse, affirm, or modify the action of the lower court and issue any necessary and appropriate orders.

c. **Fixing the Date of Execution After a Death Sentence is Affirmed.** When a conviction and sentence of death is affirmed, the Supreme Court shall fix the time for execution of the sentence and shall issue a warrant to the superintendent of the state prison directing him to execute the sentence. The superintendent shall make a return on the warrant to the Supreme Court showing the manner and time of execution.

d. **Modification of Judgment Upon Finding of Insufficient Evidence at Trial.** When the Appellate Court finds that the evidence introduced at trial is not legally sufficient to establish the defendant's guilt of the offense of which he was convicted, but is legally sufficient to establish his guilt of a necessarily included offense, it may modify the judgment to one of conviction for the lesser offense and remand the case to the trial court for resentencing.

e. **Brief Form of Opinion.** The Appellate Court may issue a brief form of opinion where the facts and issues of law are clear and the interests of justice will be served.

## APPEAL FROM SUPERIOR COURT Rule 31.17

### Comment

This rule is intended to replace Ariz.Sup.Ct.R. 22 and the 1956 Arizona Rules of Criminal Procedure, Rule 364.

**Rule 31.17(a).** This section reflects the appellate court's inherent power to issue orders during the course of appeal regarding release pending appeal, appointment of counsel, referral to the trial court for an evidentiary hearing, and any other appropriate matter.

**Rule 31.17(b).** Section (b) is meant to encompass the powers granted by Ariz.Rev.Stat. Ann. §§ 13-1716 and 13-1717 (1956) and includes affirming, reversing or modifying the judgment, correcting or reducing sentence and affirming, modifying, or vacating any order made by the lower court, including but not limited to those concerning new trials, arrest of judgment, or dismissal of the indictment or information. The appellate court may, in addition, remand a case for a new trial, and take any other action that appears just and proper under the circumstances. Cf. Ariz.R.Juv.Ct. P. 27.

**Rule 31.17(c).** The provision alters the language of Ariz. Sup.Ct.R. 22(d) so as to provide for the automatic appeal from a sentence of death. See comment to Rule 31.2(b).

**Rule 31.17(d).** This rule is based on N.Y.Crim.Pro.L. § 470.15 (2)(a) (McKinney 1971) and follows an already established Arizona procedure. See Ariz.Rev.Stat. Ann. § 13-1716 (1956) (power to modify judgment); *State v. Hunter*, 102 Ariz. 472, 433 P.2d 22 (1967); *State v. Rowland*, 12 Ariz.App. 437, 471 P.2d 322 (1970). When the appellate court concludes that modification is appropriate under this rule, it is to remand the case to the trial court for resentencing.

**Rule 31.17(e).** Summary opinions are opinions in the form previously used by the supreme court for *per curiam* denials of writs of habeas corpus, e. g., *Pina v. State*, 100 Ariz. 47, 410 P.2d 658 (1966); *Leonard v. State*, 101 Ariz. 42, 415 P.2d 570 (1966). They are limited to those cases in which the issues presented have been clearly decided in past opinions. A similar but broader rule has been adopted by the United States Court of Appeals for the District of Columbia Circuit. See D.C.Cir.R. 13(c). Ariz.Const. art. 6, § 2, (Cum.Supp.1972) and Ariz.Rev.Stat. Ann. § 12-120.17 (A) (Cum.Supp.1972) require that appellate decisions "be in writing and [have] the grounds stated," but do not demand a full exposition of the facts of the case or of the reasoning supporting the decision.

### Historical Note

#### Derivation:

1956 Rules of Criminal Procedure,  
Rule 364.

Rules Cr.Proc. § 449.  
44-2542, C. '39.

# **APPENDIX H**

ARIZONA

PROPOSED RULES

OF

CRIMINAL PROCEDURE

THESE PROPOSED RULES ARE PUBLISHED BY THE ARIZONA STATE BAR COMMITTEE ON CRIMINAL LAW FOR PRESENTATION TO THE ARIZONA SUPREME COURT WITH THE RECOMMENDATION THAT THEY BE PROMULGATED TO GOVERN CRIMINAL PROCEEDINGS IN THIS STATE. THEY ARE BEING MADE AVAILABLE TO THE PUBLIC IN ORDER TO AFFORD INTERESTED LAWYERS, JUDGES, AND CITIZENS AN OPPORTUNITY TO REVIEW AND COMMENT UPON THEM. COMMENTS SHOULD BE MAILED NO LATER THAN SEPTEMBER 15, 1972 TO:

Marvin Linner, Esquire  
Administrative Director of the Courts  
Supreme Court of Arizona  
State Capitol Building  
Phoenix, Arizona 85007

ALL COMMENTS RECEIVED WILL BE REVIEWED WITH INTEREST BY BOTH THE COMMITTEE AND THE COURT. ADDITIONAL COPIES MAY BE OBTAINED FROM ANY CLERK OF THE SUPERIOR COURT OR FROM THE ADMINISTRATIVE DIRECTOR OF THE COURTS.

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ARIZONA STATE BAR COMMITTEE ON CRIMINAL LAW  
Chairman  
Charles E. Aas - Dean, University of Arizona College of Law, Tucson

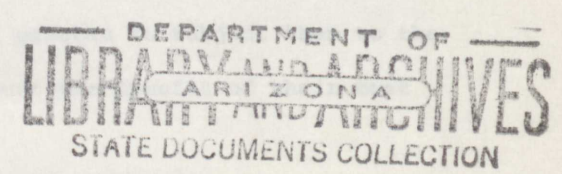
ARIZONA  
PROPOSED RULES  
OF  
CRIMINAL PROCEDURE

Presented To The  
ARIZONA SUPREME COURT  
By The

ARIZONA STATE BAR COMMITTEE ON CRIMINAL LAW,  
The Supreme Court's Advisory Committee on Criminal Rules

July 15, 1972

The preparation of these Rules was aided by grants from the Arizona Supreme Court, the Arizona State Justice Planning Agency, and the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration of the United States Department of Justice (pursuant to Part C, Section 301B or Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (PL-90-351)).



Rule 29.12(d). Paragraph (1) requires the clerk to give the defendant an initial warning that he is delinquent and that he must pay his fine within 7 days after receiving the notice or be subject to civil suit or modification of his sentence. If payment is not made within that time, the clerk must notify the prosecutor and the sentencing court. The ability to treat a fine as a lien arising from civil judgment is provided in Ariz. Rev. Stat. Ann. §13-1648(B) (1956) and Ariz. R. Crim. P. 342, and is endorsed by the ABA. The prosecutor would utilize Ariz. R. Civ. P. 69 to enforce the judgment.

In State v. Wheeler, No. 2148 (Ariz. Sup. Ct., June 15, 1972), the supreme court held that imposition of a more severe punishment after sentence has once been imposed constitutes double jeopardy. This decision, when combined with the holdings in Argersinger v. Hamlin, supra, and In re Collins, supra, leave the sentencing court with only two methods of enforcing the payment of a fine from an indigent. First, it can sentence him to an alternative sentence initially; being careful, however, to include within the sentence, terms and conditions of payment adjusted to the indigent's individual circumstances. If the defendant thereafter fails to pay, the court can use its Rule 27.3(c) authority to impose the alternative jail sentence. Second, in cases where the failure to pay a fine is willful, the court can hold the defendant in contempt and proceed under Rule 36.3, affording him the right to counsel in such proceedings. Rule 27(c)(3) also authorizes the sentencing court to adjust the size and timing of payments when good reason exists therefor.

Under paragraph (2), when payment of a fine or restitution is made a condition of probation, it should be enforced under Rules 30.2 or 30.7. Paragraph (3) is to permit enforcement of orders directing payment to the victim or to appointed counsel rather than to the clerk's office on their behalf.

#### 29.13. CONCURRENT OR CONSECUTIVE SENTENCES.

SEPARATE SENTENCES OF IMPRISONMENT IMPOSED ON A DEFENDANT FOR 2 OR MORE OFFENSES, WHETHER OR NOT THEY ARE CHARGED IN THE SAME INDICTMENT OR INFORMATION, SHALL RUN CONCURRENTLY UNLESS THE JUDGE EXPRESSLY DIRECTS OTHERWISE.

Comment: This rule is drawn from Ariz. R. Crim. P. 339, and Advisory Council of Judges of the National Council on Crime and Delinquency, Model Sentencing Act §22 (1963). The section differs from current Arizona practice in that the presumption of concurrent sentences does not hinge on the coincidental charging of two offenses in the same indictment. It is intended to encompass multiple charges arising from the same criminal episode, unrelated offenses for which sentence is imposed at one time, and a sentence imposed while the defendant is serving a sentence in Arizona or elsewhere for another offense. See State v. Rhodes, 104 Ariz. 451, 454 P.2d 993 (1969).

#### 29.14. RE-SENTENCING.

WHERE A JUDGMENT OR SENTENCE, OR BOTH, HAVE BEEN SET ASIDE ON APPEAL, BY COLLATERAL ATTACK OR ON A POST-TRIAL MOTION, THE COURT MAY NOT IMPOSE A SENTENCE FOR THE SAME OFFENSE, OR A DIFFERENT OFFENSE BASED ON THE SAME CONDUCT, WHICH IS MORE SEVERE THAN THE PRIOR SENTENCE UNLESS IT CONCLUDES, ON THE BASIS OF EVIDENCE CONCERNING CONDUCT BY THE DEFENDANT OCCURRING AFTER THE ORIGINAL SENTENCING PROCEEDING, THAT THE PRIOR SENTENCE IS INAPPROPRIATE.

Comment: This provision embodies the standards for re-sentencing adopted by the Supreme Court in Pearce v. North Carolina, 395 U.S. 711, 726 (1969) and Simpson v. Rice, 395 U.S. 711 (1969). The Court in Simpson held that "punishment already exacted for an offense must be fully 'credited' in imposing sentence upon a new conviction for the same offense." Simpson v. Rice, supra, at 718-19; see State v. Johnson, 105 Ariz. 21, 458 P.2d 955 (1969). In Pearce the Court held that if a person is re-sentenced to a more severe sentence:

. . . the factual data upon which the increased sentence is based must be made part of the record so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal. Pearce v. North Carolina, supra, at 716.

See Bronstein v. Superior Court, 106 Ariz. 251, 475 P.2d 235 (1970).

#### 29.15. SPECIAL PROCEDURES UPON IMPOSITION OF A SENTENCE OF DEATH.

AFTER IMPOSING A SENTENCE OF DEATH, THE COURT SHALL ORDER THE CLERK TO FILE A NOTICE OF APPEAL FROM JUDGMENT AND SENTENCE. NO DATE OF EXECUTION SHALL BE SET BY THE TRIAL COURT.

Comment: This rule is intended to supplement the automatic appeal in death cases provided by Rule 34.2(b). By placing the duty to set the date of execution upon the supreme court if the case is affirmed, see Rule 34.18(c), much of the unnecessary paper work required under the current system is eliminated. Appeal in death cases is virtually automatic. Cf. State v. Malumphey, 105 Ariz. 200, 461 P.2d 677 (1969); comments to Rule 34.2.

29.16. ENTRY OF JUDGMENT AND SENTENCE; WARRANT OF AUTHORITY TO EXECUTE SENTENCE.

- a. ENTRY OF JUDGMENT AND SENTENCE. THE NOTATION OF THE EXACT TERMS OF THE JUDGMENT AND SENTENCE BY THE CLERK IN THE DOCKET SHALL CONSTITUTE THE ENTRY OF JUDGMENT AND SENTENCE.
- b. WARRANT OF AUTHORITY. WHEN SENTENCE HAS BEEN PRONOUNCED, A CERTIFIED COPY OF THE ENTRY OF JUDGMENT AND SENTENCE SHALL BE SIGNED BY THE SENTENCING JUDGE AND FURNISHED FORTHWITH TO THE APPROPRIATE OFFICER. NO OTHER WARRANT OR AUTHORITY IS NECESSARY TO JUSTIFY OR REQUIRE THE EXECUTION OF ANY SENTENCE OTHER THAN DEATH.

IF THE SENTENCE IS FOR DEATH OR IMPRISONMENT, THE SHERIFF OF THE COUNTY, UPON RECEIVING A SIGNED CERTIFIED COPY OF THE ENTRY OF JUDGMENT AND SENTENCE, SHALL DELIVER THE DEFENDANT AND SUCH COPY TO THE APPROPRIATE OFFICER AND OBTAIN A RECEIPT FROM HIM.

Comment: Rule 29.16(a). This section is derived from Fed. R. App. P. 36. The date of the entry of judgment and sentence is the point from which the 20-day time limit for filing a notice of appeal is measured. See Rule 34.3.

Rule 29.16(b). This section combines Ariz. R. Crim. P. 340 and 341. The first paragraph includes fines and probation as well as sentences of imprisonment or death. Under the automatic appeal procedure in capital cases, the supreme court rather than the trial court issues the death warrant. See Rules 34.2(b) and 34.18(c) and comments thereto. Unlike Ariz. R. Crim. P. 340, no distinction is made in the second paragraph between the delivery procedures for a defendant sentenced to death and one sentenced to imprisonment, and since additional correctional facilities are being built in Arizona, the scope of the rule is not limited to the procedures for delivery to the Arizona state prison.

RULE 30. PROBATION AND PROBATION REVOCATION.

30.1. MANNER OF IMPOSING PROBATION.

THE SENTENCING COURT MAY IMPOSE ON A PROBATIONER SUCH CONDITIONS AS WILL PROMOTE REHABILITATION. IN ADDITION, THE APPROPRIATE PROBATION OFFICER MAY IMPOSE ON THE PROBATIONER REGULATIONS WHICH ARE NECESSARY TO IMPLEMENT THE CONDITIONS IMPOSED BY THE COURT AND NOT INCONSISTENT WITH THEM. ALL CONDITIONS AND REGULATIONS SHALL BE IN WRITING, AND A COPY OF THEM GIVEN TO THE PROBATIONER.

Comment: General. Rule 30 governs probation procedures after the initial decision to grant probation has been made at sentencing. See Rule 29. It is based primarily on the current probation practices in Maricopa and Pima counties and ABA, Standards Relating to Probation (Approved Draft, 1970). It is intended to govern probation granted by either the superior or the justice court. Since justice courts are not provided state probation services, all references to and notice requirements for probation officers should be disregarded in the justice court context. See Ariz. Rev. Stat. Ann. §12-251 (1956).

Rule 30.1. This provision is based on present practice and ABA, Standards, supra, at §§3.1(a) and 3.2(a). Ariz. Rev. Stat. Ann. §13-1657(A) (Cum. Supp. 1971) permits the sentencing court to impose "such terms and conditions as it determines" including up to 1 year in jail. The usual practice in the superior courts of Pima and Maricopa counties is for the court to impose a few conditions such as to obey the rules or regulations imposed by the probation officer, to lead a law-abiding life, and occasionally, to consume no alcoholic beverages or to undergo mental or medical treatment. The probation officer then gives the defendant a standard set of regulations containing a few options and space for special regulations, explains them, and asks the defendant to sign a statement that he understands the conditions and regulations and the possible consequences of a violation and that he agrees to abide by the terms of his probation. The committee concluded that it was not necessary to include this explanation and signed statement procedure specifically in the rule, but they did not intend to prohibit or discourage the practice.

Rule 30.1 retains this general procedure. The court sets out the broad outlines and the probation officer fills in the details. Where there is no probation officer, the full burden falls on the court.

The ABA recommends that the probation officer be precluded from imposing conditions so as not to mix the imposition and implementation functions, and that the necessary flexibility be introduced through variations in enforcement. ABA, Standards, supra, at 43. The committee concluded that selective imposition and modification of conditions are a better, more rational, means of achieving flexibility than selective enforcement and, further, that forcing the sentencing court to impose all conditions would place on it an unduly great burden. The ultimate power over the restrictions placed on the defendant remains with the sentencing court and it retains the power to modify any condition or regulation imposed. See Ariz. Rev. Stat. Ann. §12-253(b) (Cum. Supp. 1971).

Comment: Rule 33.6 is included in the rule in response to a problem pointed out to the staff by the Maricopa County Clerk's office. Ariz. Rev. Stat. Ann. §13-1675 (Cum. Supp. 1971) requires that fines collected in any court but the police court be paid into the county treasury. No problem arises when a fine is imposed by the lower court and, after a trial de novo, the superior court remands the case for appropriate action. Ariz. Rev. Stat. Ann. §22-374(A)(2) Cum. Supp. 1971). However, where the superior court imposes sentence anew, see Ariz. Rev. Stat. Ann. §22-374(A)(1), the clerk's office often finds itself under a duty to pay over to the county treasury moneys which it does not have, since Ariz. Rev. Stat. Ann. §22-373 (1956) requires the presiding officer of the lower court to transmit the orders, bail bonds, and securities taken in the action, but not the fines collected.

Rule 33.6 is intended to resolve the dilemma. It requires the presiding officer of the lower court to transmit any fines collected in the action only after the defendant has been adjudged guilty in the superior court. When the case is remanded to the lower court, the fine remains with it, since it must be paid to the appropriate treasury by that court. This approach is easier than requiring that fines automatically be transmitted to the superior court as part of the appeal record only to be sent back to the lower court if the case is affirmed.

**RULE 34. APPEAL FROM SUPERIOR COURT.**

**34.1. SCOPE OF RULE.**

RULE 34 GOVERNS THE PROCEDURE FOR APPEALS FROM THE SUPERIOR COURT OF ARIZONA TO THE ARIZONA SUPREME COURT OR COURT OF APPEALS WHICH ARE JOINTLY REFERRED TO HEREIN AS "THE APPELLATE COURT."

Comment. Ariz. Const. art. 2, §24 (1956) guarantees defendants in criminal prosecutions "the right to appeal in all cases." Rule 34 implements that right, Ariz. Rev. Stat. Ann. §§13-1711 through 13-1721 (1956 and Cum. Supp. 1971) and Ariz. Rev. Stat. Ann. §12-120.21 (Cum. Supp. 1971). Changes have been made from current Arizona practice to provide a more expeditious criminal appellate procedure. The ABA, Standards Relating to Criminal Appeals (Approved Draft, 1970) and ABA, Standards Relating to Appellate Review of Sentences (Approved Draft, 1968), and the Federal Rules of Appellate Procedure were considered in its drafting.

**34.2. NOTICE OF APPEAL; AUTOMATIC APPEAL; JOINT APPEALS.**

- a. FILING THE NOTICE OF APPEAL. UNLESS A DEFENDANT HAS BEEN SENTENCED TO DEATH, AN APPEAL OR CROSS-APPEAL SHALL BE TAKEN BY FILING A WRITTEN NOTICE OF APPEAL WITH THE CLERK OF THE TRIAL COURT, WITHIN THE TIME ALLOWED BY RULE 34.3.
- b. AUTOMATIC APPEAL WHEN DEFENDANT IS SENTENCED TO DEATH. WHEN A DEFENDANT HAS BEEN SENTENCED TO DEATH, THE CLERK, PURSUANT TO RULE 29.15, SHALL FILE A NOTICE OF APPEAL ON HIS BEHALF AT THE TIME OF ENTRY OF JUDGMENT AND SENTENCE.
- c. JOINT APPEALS. IF 2 OR MORE PERSONS ARE ENTITLED TO APPEAL FROM A JUDGMENT OR ORDER OF THE SUPERIOR COURT, AND THEIR INTERESTS ARE SUCH AS TO MAKE JOINDER PRACTICABLE, THEY MAY FILE A JOINT NOTICE OF APPEAL, OR MAY JOIN IN THE APPEAL AFTER FILING SEPARATE TIMELY NOTICES OF APPEAL, AND PROCEED AS A SINGLE APPELLANT.
- d. CONTENT OF THE NOTICE OF APPEAL. THE NOTICE OF APPEAL SHALL IDENTIFY THE ORDER, JUDGMENT OR SENTENCE APPEALED FROM AND SHALL, UNLESS FILED UNDER RULE 34.2(b), BE SIGNED BY THE APPELLANT OR HIS ATTORNEY, IF ANY, OR BY THE PROSECUTOR IF THE APPEAL OR CROSS-APPEAL IS TAKEN BY THE STATE.
- e. ADDITIONAL INFORMATION. THE APPELLANT SHOULD ATTACH TO THE NOTICE OF APPEAL:
  - (1) THE NAME AND ADDRESS OF THE DEFENDANT;
  - (2) THE NAME AND ADDRESS OF THE ATTORNEY FOR THE DEFENDANT, IF ANY;
  - (3) THE NAME AND ADDRESS (IF KNOWN) OF ANY CO-DEFENDANT AT TRIAL; AND,
  - (4) WHETHER THE DEFENDANT WAS REPRESENTED BY APPOINTED COUNSEL AT THE DETERMINATION OF GUILT OR AT SENTENCING.

f. SERVICE OF THE NOTICE OF APPEAL.

- (1) WHEN DEFENDANT APPEALS. WHEN A DEFENDANT APPEALS, THE CLERK OF THE TRIAL COURT SHALL SEND A COPY OF THE NOTICE OF APPEAL TO THE PROSECUTOR OF THE COUNTY IN WHICH THE DEFENDANT WAS TRIED, TO THE ATTORNEY GENERAL, TO EACH CO-DEFENDANT AT TRIAL WHO IS NOT A JOINT-APPELLANT AND HIS COUNSEL OF RECORD, IF ANY, TO THE APPROPRIATE COURT REPORTER OR REPORTERS, AND TO THE CLERK OF THE PROPER APPELLATE COURT.
  - (2) WHEN THE STATE APPEALS. WHEN THE STATE APPEALS OR CROSS-APPEALS, THE CLERK OF THE TRIAL COURT SHALL SEND A COPY OF THE NOTICE OF APPEAL TO EACH DEFENDANT AND HIS COUNSEL OF RECORD, IF ANY, TO THE APPROPRIATE COURT REPORTER OR REPORTERS, AND TO THE CLERK OF THE PROPER APPELLATE COURT.
  - (3) NOTICE OF RIGHT TO COUNSEL. THE CLERK SHALL INCLUDE WITH ANY NOTICE OF APPEAL SENT TO A DEFENDANT, AND SHALL SEND TO A DEFENDANT FILING A NOTICE OF APPEAL PRO SE, A NOTICE ADVISING HIM OF HIS RIGHTS TO COUNSEL UNDER RULE 6.
  - (4) NOTICE TO THE APPELLATE COURT OF PENDING POST-TRIAL MOTIONS. THE CLERK SHALL INCLUDE WITH THE COPY OF THE NOTICE OF APPEAL SENT TO THE APPELLATE COURT, A COPY OF ANY MOTION FILED BY ANY PARTY UNDER RULE 27 WHICH HAS NOT YET BEEN DECIDED BY THE TRIAL COURT.
  - (5) MANNER OF SERVICE. THE NOTICE OF APPEAL SHALL BE SENT TO THE DEFENDANT AT HIS ADDRESS OF RECORD OR AT HIS PLACE OF INCARCERATION AND TO HIS COUNSEL OF RECORD.
- g. ENTRY BY THE CLERK. THE CLERK SHALL MAKE AN ENTRY IN THE DOCKET WHEN A NOTICE OF APPEAL IS FILED AND SHALL NOTE WHETHER THE DEFENDANT HAD APPOINTED COUNSEL AT THE DETERMINATION OF GUILT OR AT SENTENCING. HE SHALL ALSO ENTER IN THE DOCKET THE NAMES AND ADDRESSES OF THE PARTIES TO WHOM COPIES OF THE NOTICE OF APPEAL ARE MAILED TOGETHER WITH THE DATE OF MAILING.

Comment: This rule is intended to provide a simple means for taking appeals and to insure that all persons directly affected by the taking of an appeal are promptly notified. It is drawn from Fed. R. App. P. 3.

Rules 34.2(a) and (c). As under Ariz. R. Crim. P. 350, the notice of appeal is filed with the clerk of the trial court. Section (c) is taken directly from Fed. R. App. P. 3(b). Together with Rule 34.4(b), permitting consolidation of appeals, it is intended to encourage the taking of joint appeals in order to reduce the case load of the appellate court and the workload of clerks and court reporters.

Rule 34.2(b). Section (b), providing for automatic appeal, is similar to Cal. Penal Code §1239(b) (West 1970), Ill. Ann. Stat. §38:121-12(a) (Smith-Hurd 1964), and Ala. Code §15:382(1)-(13) (1958). The committee feels strongly that automatic appeal is needed to insure full review in all cases where the death penalty is imposed, cf. State v. Malumphey, 105 Ariz. 200, 461 P.2d 677 (1969), to expedite such review, and to eliminate the paperwork of staying and resetting the date of execution and reissuing the death warrant. See, Note, 7 Ariz. L. Rev. 106 (1965).\*

Other provisions implementing the automatic appeal are Rule 29.15, providing that the court at the time it pronounces a sentence of death shall order the clerk to file a notice of appeal on the defendant's behalf, and Rule 34.18(c), which provides that if the judgment and sentence are affirmed by the supreme court, that court shall fix the time for execution of sentence and issue the death warrant.

There is no statutory provision for automatic appeal, but Ariz. Rev. Stat. Ann. §13-1711 (Cum. Supp. 1971) permits the manner of appeal to be governed by the rules of criminal procedure. The power to fix the date of execution is given to the supreme court by Ariz. Rev. Stat. Ann. §13-1720 (1956), providing a partial exception to Ariz. Rev. Stat. Ann. §13-1642 (1956) which requires punishment to be imposed by the trial court. Ariz. Rev. Stat. Ann. §13-1720 (1956) presumes explicitly that a date of execution has already been set by the trial court and that the supreme court is merely exercising its power to modify orders under Ariz. Rev. Stat. Ann. §13-1716 (1956). Rule 34.2(b) is intended to do away with the trial court's purely perfunctory task of setting the date. It is not, of course, essential to the automatic appeal to have the trial court refrain from fixing the date of execution, but such a provision eliminates unnecessary complexity. The committee recognizes the inference in Ariz. Rev. Stat. Ann. §13-1720 (1956) may justify a request for legislative change.

\* The committee's analysis was completed before the Supreme Court invalidated current death penalties in Furman v. Georgia, CCH Sup. Ct. Bull. B. 3895, June 29, 1972.

Rules 34.2(d) and (e). Except for automatic appeals, only the signature of the appellant or his counsel and a statement of the judgment, sentence or order being appealed from is required for a proper notice of appeal. See Ariz. R. Crim. P. 350. The other information is to aid service by the clerk and to expedite transcription of the record and appointment of counsel. See Rules 34.5 and 34.8(b) and (d). It is the committee's intent that failure to supply this further information, or any other information such as the court to which the appeal is taken, will not be grounds for dismissal nor defeat the appellate court's jurisdiction. The term "determination of guilt" is defined in Rule 29.1(c).

Rule 34.2(f). The burden of advising other interested persons that an appeal has been filed is shifted from the parties to the clerk of the trial court. Cf. Ariz. R. Crim. P. 351 and 352. This shift follows the pattern of Fed. R. App. P. 3(d) and should expedite notification, especially in those cases in which the appellant is indigent and imprisoned, having only limited ability to secure proper service. Non-appellant co-defendants at trial are notified to alert them that an appeal has been taken, a practice already followed in some counties.

A copy of the notice of appeal and attachment is sent to the court reporter or reporters who reported pretrial hearings, the trial or plea hearing, sentencing and any other superior court proceedings in the case, in order to alert them, at the earliest possible moment, of the need to prepare a transcript (this practice is already followed in some counties) and to inform them whether or not the appeal is being taken by a person declared indigent under Rule 6. See Rule 34.2(e)(4). With very rare exceptions the transcript in those cases will be paid for by the county. See Rule 34.5(a)(1). Hence, the reporter can begin transcribing the record immediately, thereby cutting down the dead-time between the filing of the notice of appeal, the order of the transcript, see Rule 34.8(b), and the authorization for payment by the county, see Ariz. Rev. Stat. Ann. §13-1714 (1956), which sometimes delays preparation of the transcript by as much as 2 months. Rules 34.8(d) and (e) govern payment of the court reporter by non-indigent parties and Rule 34.5(a)(2) allows a person who did not proceed as an indigent prior to conviction to so proceed on appeal if he now qualifies.

The clerk of the appellate court is notified in accordance with federal practice and the recommendations made in Christian, Delay in Criminal Appeals: Functional Analysis of One Court's Work, 23 Stan. L. Rev. 676 (1971), in order to permit appellate court supervision of the preparation of appellate papers and documents by the parties and trial court personnel.

Paragraph (3) provides automatic notice of the rights to be represented by (and to waive) counsel on appeal and to court-appointed counsel if he is indigent, to a defendant who files a notice of appeal pro se, or who is sent a notice of appeal. See Rule 6.

Paragraph (4) is to provide notice to the appellate court of any post-trial motions then pending so that the court can exercise its power, under Rule 34.4, to stay the appeal. Rules 27.2(c) and 35.4(b) provide for notice to the appellate court of any post-trial motions or petitions filed while an appeal is pending.

Service on counsel is required in addition to service on the defendant because communication between counsel and defendant is often poor at this stage.

The word "send" is used to make clear that service may be accomplished by ordinary mail and is complete upon mailing. See Ariz. R. Civ. P. 5(c).

Rule 34.2(g). The notation that the defendant has proceeded below as an indigent will automatically serve as authorization for him to proceed as an indigent on appeal unless the trial court orders otherwise. See Rule 34.5.

### 34.3. TIME FOR TAKING APPEAL.

THE NOTICE OF APPEAL SHALL BE FILED WITH THE CLERK OF THE TRIAL COURT WITHIN 20 DAYS AFTER THE ENTRY OF JUDGMENT AND SENTENCE, EXCEPT THAT:

- a. A NOTICE OF CROSS-APPEAL MAY BE FILED WITHIN 20 DAYS AFTER SERVICE OF THE APPELLANT'S NOTICE OF APPEAL; AND
- b. A NOTICE OF DELAYED APPEAL SHALL BE FILED WITHIN 20 DAYS AFTER SERVICE OF AN ORDER GRANTING A DELAYED APPEAL UNDER RULE 35.1(f).

Comment: This rule reduces the time in which an appeal may be taken from 60 to 20 days after entry of judgment and sentence and the time for filing a cross-appeal from 30 to 20 days after the filing of the notice of appeal. See Ariz. R. Crim. P. 348, 349. This reduction is based on the twin premises that the defendant will be advised of his appeal rights at the time of sentencing, and that trial counsel, whether or not appointed, will continue to serve as counsel for the defendant during an appeal. See Rules 29.11 and 6.3(b). The committee concluded that the present 60-day limit unduly lengthens the appellate process. It decided that the attorney who tried the case should know if there are grounds for appeal and should, therefore, be able to advise his client promptly whether or not to appeal. The 20-day limit was selected as more workable than the 10-day limit of Fed. R. App. P. 4(b). The Standards do not make a definite recommendation, but indicate

that 15 days for appeal of the sentence alone and 30 days for other appeals are reasonable limits. ABA, Standards Relating to Criminal Appeals §2.1 (Approved Draft, 1970); ABA, Standards Relating to Appellate Review of Sentences §2.2(b)(1) (Approved Draft, 1968). A single time period was chosen to avoid technical classifications and complications.

The entry of judgment and sentence is taken as a single benchmark for determination of the timeliness of an appeal, with 2 exceptions. For cross-appeals, the filing of the notice of appeal is the point from which the 20-day period will run. The word "may" is used so as not to imply that cross-appeals are required in every case. For delayed appeals, the service of the order is the benchmark. The order itself is not used to trigger the appellate process because it lacks the additional information accompanying the notice of appeal. See Rule 35.1(f).

34.4. MOTION TO STAY APPEAL; NOTICE OF REINSTATEMENT OF APPEAL; CONSOLIDATION OF APPEALS.

a. MOTION TO STAY APPEAL; NOTICE OF REINSTATEMENT OF APPEAL.

- (1) THE APPELLATE COURT, ON MOTION OF A PARTY OR ON ITS OWN INITIATIVE, MAY STAY AN APPEAL WHILE A MOTION UNDER RULE 27 OR A PETITION UNDER RULE 35 IS PENDING. IF A STAY IS ORDERED, THE CLERK OF THE APPELLATE COURT SHALL NOTIFY ALL PARTIES, THE CLERK OF THE TRIAL COURT, AND, IF THE TRANSCRIPT HAS NOT YET BEEN FILED, THE APPROPRIATE COURT REPORTERS.
- (2) WITHIN 20 DAYS AFTER THE TRIAL COURT'S DECISION ON THE MOTION OR PETITION, THE APPELLANT SHALL FILE WITH THE CLERK OF THE APPELLATE COURT, AND SEND TO ALL PERSONS NOTIFIED OF THE STAY, EITHER A NOTICE OF REINSTATEMENT OF THE APPEAL OR A MOTION TO DISMISS THE APPEAL UNDER RULE 34.16(a)(2).

b. CONSOLIDATION OF APPEALS.

- (1) APPEALS WHICH RAISE A COMMON QUESTION OF LAW OR FACT MAY BE CONSOLIDATED AT ANY TIME BY ORDER OF THE APPELLATE COURT UPON ITS OWN INITIATIVE AFTER OPPORTUNITY HAS BEEN GIVEN TO THE PARTIES TO RAISE OBJECTIONS, OR UPON MOTION OF A PARTY OR UPON STIPULATION BY THE PARTIES.
- (2) AN APPEAL FROM A FINAL DECISION ON A RULE 27 MOTION OR RULE 35 PETITION FILED PRIOR TO A NOTICE OF APPEAL OR FILED WHILE AN APPEAL IS PENDING AND DECIDED WHILE THE APPEAL IS STAYED, SHALL BE CONSOLIDATED WITH AN APPEAL FROM THE JUDGMENT OR SENTENCE, UNLESS GOOD CAUSE IS SHOWN WHY SUCH CONSOLIDATION SHOULD NOT OCCUR.

Comment: This rule is intended to prevent unnecessary duplication and to further define the relationship between appeals and collateral post-conviction procedures. See Rules 34.2(f)(4), 27.2 and 35.2.

Rule 34.4(a). Under Rule 34.3 a notice of appeal must be filed within 20 days of entry of judgment and sentence, and under Rule 34.11 the appeal is perfected at the time the first major filing is due in the appellate court. Under Rules 27.2 and 27.3(a), a defendant may move the trial court to vacate a judgment or unlawful sentence within 60 days of the entry of judgment or sentence, but before an appeal is perfected. Under Rule 35.1 a party may file a petition for post-conviction relief at any time subject to Rule 35.2, which precludes the filing of a petition based on any issue still raisable on appeal or in a Rule 27 post-trial motion. In effect, during the pendency of an appeal, a Rule 35 petition is available only after perfection of the appeal and only to raise issues not still raisable on appeal, such as those for which there is no record. Thus, it is possible that proceedings may be pending in both the trial and appellate courts.

Section (a) is intended to empower the appellate court to stay the appeal whenever this jurisdictional overlap threatens to waste the efforts of the courts or the parties. The committee recognized that there may be many cases in which a stay will not be required; hence, there is no mandatory stay provision. The decision is left with the sound discretion of the appellate court, to balance the delay in prosecution of the appeal against possible gains in judicial efficiency, including elimination of the appeal if the motion or petition is granted or consolidation of an appeal from the decision on the motion or petition with the appeal already pending.

Rule 34.4(b). Rule 34.4(b) encompasses two situations. Paragraph (1) governs when separate appeals are taken from the same or similar cases such as when co-defendants file separate appeals. Consolidation is discretionary. The parties have an opportunity to raise objections to consolidation whether it is suggested by a party or by the court. See Rules 38.1 and 38.3.

34.18. DISPOSITION AND ANCILLARY ORDERS.

- a. ANCILLARY ORDERS. THE APPELLATE COURT MAY ISSUE SUCH ORDERS IN AID OF THE PROCEEDINGS AS IT DEEMS NECESSARY.
- b. DISPOSITION, IN GENERAL. THE APPELLATE COURT MAY REVERSE, AFFIRM, OR MODIFY THE ACTION OF THE LOWER COURT AND ISSUE ANY NECESSARY AND APPROPRIATE ORDERS.
- c. FIXING THE DATE OF EXECUTION AFTER A DEATH SENTENCE IS AFFIRMED. WHEN A CONVICTION AND SENTENCE OF DEATH IS AFFIRMED, THE SUPREME COURT SHALL FIX THE TIME FOR EXECUTION OF THE SENTENCE AND SHALL ISSUE A WARRANT TO THE SUPERINTENDENT OF THE STATE PRISON DIRECTING HIM TO EXECUTE THE SENTENCE. THE SUPERINTENDENT SHALL MAKE A RETURN ON THE WARRANT TO THE SUPREME COURT SHOWING THE MANNER AND TIME OF EXECUTION.
- d. MODIFICATION OF JUDGMENT UPON FINDING OF INSUFFICIENT EVIDENCE AT TRIAL. WHEN THE APPELLATE COURT FINDS THAT THE EVIDENCE INTRODUCED AT TRIAL IS NOT LEGALLY SUFFICIENT TO ESTABLISH THE DEFENDANT'S GUILT OF THE OFFENSE OF WHICH HE WAS CONVICTED, BUT IS LEGALLY SUFFICIENT TO ESTABLISH HIS GUILT OF A NECESSARILY INCLUDED OFFENSE, IT MAY MODIFY THE JUDGMENT TO ONE OF CONVICTION FOR THE LESSER OFFENSE AND REMAND THE CASE TO THE TRIAL COURT FOR RESENTENCING.
- e. SUMMARY OPINIONS. THE APPELLATE COURT MAY ISSUE A SUMMARY OPINION WHERE THE ISSUES PRESENTED AND THE INTERESTS OF JUSTICE AND CLARITY PERMIT.
- f. DISTRIBUTION OF DECISIONS AND ORDERS. WHEN A DECISION OR ORDER IS FILED, THE CLERK OF THE APPELLATE COURT SHALL PROMPTLY SERVE A COPY ON THE ATTORNEY GENERAL, THE PROSECUTOR, THE DEFENDANT AND HIS ATTORNEY, IF ANY, AND THE TRIAL COURT.

Comment: This rule is intended to replace Ariz. Sup. Ct. R. 8 and 22 and Ariz. R. Crim. P. 364.

Rule 34.18(a). This section reflects the appellate court's inherent power to issue orders during the course of appeal regarding release pending appeal, appointment of counsel, referral to the trial court for an evidentiary hearing, and any other appropriate matter.

Rule 34.18(b). Section (b) is meant to encompass the powers granted by Ariz. Rev. Stat. Ann. §§13-1716 and 13-1717 (1956) and includes affirming, reversing or modifying the judgment, correcting or reducing sentence and affirming, modifying, or vacating any order made by the lower court, including but not limited to those concerning new trials, arrest of judgment, or dismissal of the indictment or information. The appellate court may, in addition, remand a case for a new trial, and take any other action that appears just and proper under the circumstances. Cf. Ariz. R. Juv. Ct. P. 27.

Rule 34.18(c). This provision alters the language of Ariz. Sup. Ct. R. 22(d) so as to provide for the automatic appeal from a sentence of death. See comment to Rule 34.2(b). Except for automatic appeals, there seems no reason not to have the judgment enforced by the trial court. See Ariz. R. Crim. P. 364.

Rule 34.18(d). This rule is based on N.Y. Crim. P.L. §470.15.2(a) (McKinney Supp. 1970) and follows an already established Arizona procedure. See Ariz. Rev. Stat. Ann. §13-1716 (1956) (power to modify judgment); State v. Hunter, 102 Ariz. 472, 433 P.2d 22 (1967); State v. Rowland, 12 Ariz. App. 437, 471 P.2d 322 (1970). When the appellate court concludes that modification is appropriate under this rule, it is to remand the case to the trial court for resentencing. The New York statute has been upheld without question, though it has been pointed out that it does not merely bestow a power to exercise mercy. People v. May, App. Div. 2d 508, 195 N.Y.S.2d 792 (1960). The committee concluded that this provision would reduce the number of remands for new trial and that the appellate court can deal with the problem of defining a necessarily included offense. The scope of the provision does not extend to the situation in which the appellate court rules that certain evidence should have been excluded from the trial. The appellate court cannot predict what effect that evidence had on the verdict or finding and any attempt to do so by modifying the judgment to a lesser included offense is a deprivation of due process. Graham v. Mancusi, 457 F.2d 463 (2d Cir. 1972).

# **APPENDIX I**

3-14-94

ARIZONA HOUSE OF REPRESENTATIVES  
Forty-first Legislature - Second Regular Session

COMMITTEE ON JUDICIARY

Minutes of Meeting  
Thursday, March 10, 1994  
House Hearing Room 2 - 8:30 a.m.

TAPE 22, SIDE A

Chairman Baird called the meeting to order at 8:50 a.m. and the attendance was noted.

Members Present

Mrs. Gerard	Mr. Keegan	Mr. Verkamp
Mrs. Graham	Mr. Newman	Mr. Kaites
Mr. Hubbard	Mr. Ortega	Mr. Baird, Chairman

Members Absent

Ms. Daniels (excused)      Mr. Hanley (excused)

Speakers Present

Jim Shumway, Maricopa County Elections Director  
Robert Lynch, representing Irrigation and Electrical Districts Association of Arizona

Beth Schneider, Majority Intern  
Senator Patti Noland, Sponsor

Tom Augherton, Chief of Administration, Attorney General's Office

Shelia Polk, Assistant Attorney General, Attorney General's Office

(Chairman Baird read names of others present to testify, but who did not speak, see Pages 4 and 7)

Paul McMurdie, Assistant Attorney General, Criminal Appeals, Attorney General's Office

Nancy Swetnam, Legislative Liaison, Arizona Supreme Court

Dominica Minore, Majority Research Analyst

Don Isaacson, representing State Fraternal Order of Police

Guest List (Attachment 1)

CONSIDERATION OF BILLS

S.B. 1017, marriage license; expiration and abstract - HELD ONE WEEK

Chairman Baird announced that S.B. 1017 will be held one week.

S.B. 1163, consolidated elections - DO PASS AMENDED

Jim Shumway, Maricopa County Elections Director, testified that he has been involved in the issue of consolidating elections since 1968. He disclosed that

in 1992, Maricopa County entered into intergovernmental elections agreements with the cities of Mesa, Gilbert and Fountain Hills in the general election resulting in thousands of dollars of savings for those jurisdictions.

Mr. Shumway advised that this bill, with the Baird 2-line proposed amendment (Attachment 2), will allow larger cities to opt out of consolidated dates and have elections according to their charters. He said the proposed amendment will address concerns expressed by cities relating to overlapping jurisdictions.

Mr. Shumway addressed the cost issues involved in consolidated elections posed by Mr. Ortega at the Judiciary Committee meeting held March 3 concerning the mailing of sample ballots and funding costs responsibilities. He said that in 1992, Maricopa County charged the jurisdictions only the additional costs for placing their issues on the general election ballot. Insofar as postage costs are concerned, he maintained that the cost is the same for mailing a 12-page sample ballot as it is for mailing a 28-page sample ballot to each household. He indicated that printing costs are minimal and that a single sample ballot is desirable for overlapping jurisdictions. Advantages of consolidated elections include shared ballots, shared polling places and shared election boards.

Mr. Shumway advised that although not unanimous, most of the members of the Elections Officers organization support the concept of consolidated elections.

Chairman Baird referred to and asked Mr. Shumway to comment on the concerns expressed at the March 3 meeting that many district or city elections would be overshadowed by legislative and state races. Mr. Shumway opined that it is true to some extent. Recent studies showed that, even with many issues added to a ballot, voters still vote in the 80 percent range, so he opined that there is not a drastic falloff in completing the ballot.

Mr. Kaites moved, seconded by Mrs. Graham, that S.B. 1163 do pass.

Robert Lynch, representing Irrigation and Electrical Districts Association of Arizona, testified that S.B. 1163 is crafted to recognize that certain kinds of special districts do not fit under the consolidation program, i.e., those that have different voting procedures, such as agriculturally-related districts. He said the Association's concern relates to the language concerning declarations of statewide concern. The Association believes the statement is too broad and recommends striking the word "all".

Chairman Baird commented that Mr. Lynch's suggestion, although minuscule, is valid and he is amenable to the recommendation.

Mr. Kaites moved, seconded by Mr. Newman, that S.B. 1163 be amended as follows:

Page 26, line 47, strike "ALL"

Page 27, line 1, strike "ALL"

The motion carried.

Chairman Baird explained that his 2-line amendment dated 3/7/94 (Attachment 2) removes the section requiring an election consolidation study and the section relating to a delayed repeal date. He said this amendment takes the cities of Tucson and Phoenix from the purview of this bill. He revealed that they already have the ability to consolidate if they wish.

Mr. Newman expressed concern about other small communities in his district, such as Bisbee, Douglas, Nogales, and Sierra Vista. Chairman Baird divulged that the effect of this legislation will require those cities to consolidate their elections.

Mr. Verkamp pointed out that the City of Flagstaff is also a charter city which holds its elections earlier in the year than most, mainly to get their City Council on line to do their budget for the next year. He stated that Kent Fairbairn of the Arizona League of Cities and Towns advised him that this issue is also a concern to Flagstaff, and he said that he will follow up on this.

Mr. Kaites moved, seconded by Mrs. Graham, that the Baird 2-line amendment dated 3/7/94 be adopted (Attachment 2). The motion carried.

Mrs. Graham explained that her 3-page amendment dated 3-2-94 (Attachment 3) contains clarifying language which states that candidates for school board elections shall file with the Clerk of the Board of Supervisors. She moved, seconded by Mr. Kaites, that her 3-page amendment be adopted. The motion carried.

Mr. Kaites moved, seconded by Mrs. Graham, that S.B. 1163 as amended do pass. The motion carried by a roll call vote of 5-2-0-4 (Attachment 4).

#### S.B. 1248, restitution liens; juvenile offenses - DO PASS

Beth Schneider, Majority Intern, explained that S.B. 1248 allows the victim of a delinquent act to file a restitution lien on real and personal property against the delinquent juvenile. The bill outlines the information that the lien must include and specifies the governmental entities with which the restitution lien is to be filed. The bill also provides that upon the delinquent's eighteenth birthday, the court must enter a civil judgment in favor of the State or any person entitled to restitution for the unpaid balance. Filing of a lien does not limit the State or any person from obtaining other civil remedy authorized by law.

Senator Patti Noland, Sponsor, revealed that after a juvenile's eighteenth birthday, there is no recourse available to a victim for restitution. Passage of this legislation will provide a remedy for victims entitled to the unpaid balance of the restitution or fine.

Chairman Baird stated that it sounds reasonable to him that if a juvenile is under an order to make restitution and does not finish restitution by the time he reaches eighteen years of age, the order shall continue and a judgment should be entered for that restitution.

Mr. Kaites moved, seconded by Mrs. Graham, that S.B. 1248 do pass. The motion carried by a roll call vote of 7-0-0-4 (Attachment 5).

#### S.B. 1140, excavating historic sites - DO PASS AMENDED

Beth Schneider, Majority Intern, explained that S.B. 1140 prescribes that a person who knowingly excavates a historical site, whether private or public, or collects any archeological specimens without permission of the landowner is guilty of a Class 6 felony.

Tom Aughterton, Chief of Administration, Attorney General's Office, testified in support of S.B. 1140. He explained that this bill was drafted because current law requires that prosecutors prove that the person knowingly excavated on public land. The purpose of this bill is to indicate that whether a person is digging on public or private land, it will be illegal without the permission of the property owner. A committee was formed to study this issue. Groups involved in drafting this legislation included the Gila River Indian Community, Gila County Attorney's Office, U.S. National Parks Service, Arizona State Land Department, University of Arizona, Arizona State Museum, Arizona Archeological Society, Conservation Law Enforcement Association, Arizona State Historic Preservation Office, Yavapai County Attorney's Office, Hopi Tribe, Intertribal Council of Arizona, Pima County Department of Transportation, Coronado National Forest, Arizona Department of Agriculture, Arizona Department of Transportation, Arizona State University, U.S. Bureau of Land Management, Heard Museum and Apache County Attorney's Office.

Shelia Polk, Assistant Attorney General, Attorney General's Office, revealed that it is difficult for prosecutors to prove that someone is on State land or private land. This legislation makes it illegal to excavate on anybody's property without permission.

Chairman Baird noted that when discussion was held in the Senate on this bill, the requirement that the permission had to be in writing was removed. Ms. Polk explained the reasons for removing the written permission requirement: the State should not tell the owner of private property that permission must be in writing, and prosecutors feel it is too onerous to make the failure to carry something in writing a felony.

Mr. Ortega and Mr. Hubbard both agreed that written permission is preferable to verbal permission, and they opined that it would make prosecution easier and not so onerous. Ms. Polk stated that the State has the burden of proving all the elements of proof; however, from a prosecutor's standpoint, written permission is not significant enough to make a difference from the burden of proof point of view.

Mrs. Graham moved, seconded by Mrs. Gerard, that S.B. 1140 do pass.

Chairman Baird announced that he had Request to Speak forms from the following people who are in favor of Senate Bill 1140:

Carol Griffith, Deputy, State Historic Preservation Office, Arizona State Parks  
Joe Albo, Executive Assistant, Governor's Office  
James Gillings, Conservation Law Enforcement Association  
Richard Seger, representing himself, Winkelman  
Nancy Seger, representing herself, Winkelman  
Charles Gilbert, Arizona Archaeological Society, Inc.  
Mike Anable, Legislative Liaison, Arizona State Land Department  
Kenneth Roser, Cultural Resource Manager, Arizona State Land Department  
Raymond Thompson, Director, Arizona State Museum  
Brian Kenny, Arizona Archaeology Advisory Commission

Chairman Baird explained that the offense, which has always been a Class 5 felony, was changed to a Class 6 felony by a Senate amendment. He said his 2-

line amendment dated 3/8/94 changes the offense back to a Class 5 felony (Attachment 6). Ms. Polk stated that she supports changing the offense back to a Class 5 felony because these are serious thefts involving large dollar amounts.

Mr. Ortega moved, seconded by Mr. Verkamp, that the Baird 2-line amendment dated 3/8/94 be adopted (Attachment 6). The motion carried.

Mr. Ortega moved, seconded by Mr. Hubbard, that S.B. 1140 be amended as follows:

Page 1, line 10, after "WITHOUT" insert "WRITTEN"

Mr. Hubbard expressed support for Mr. Ortega's amendment. Chairman Baird and Mrs. Gerard both opposed the amendment.

Question was called for that the Ortega amendment be adopted. Division was called and by a hand vote of 3 ayes and 4 nays, the motion failed.

Mrs. Graham moved, seconded by Mr. Hubbard, that S.B. 1140 as amended do pass. The motion carried by a roll call vote of 8-0-0-3 (Attachment 7).

#### S.B. 1002, death sentences; review - DO PASS

Paul McMurdie, Assistant Attorney General, Criminal Appeals, Attorney General's Office, reviewed the appellate process involved in a capital case. He provided a chart to help Members follow his comments on where the changes will take place in the process (Attachment 8). He said the capital review starts after the trial. In a capital case, once the death penalty has been imposed, all appeals are mandatory to go to the Arizona Supreme Court.

#### TAPE 22, SIDE B

Mr. McMurdie stated that if the defendant's appeal is unsuccessful, the Arizona Supreme Court can petition the U.S. Supreme Court for a Writ of Certiorari. If the petition is denied, the defendant automatically engages in post-conviction relief. This petition is automatic, although not mandatory, and is where the defendant alleges ineffective assistance of counsel. If the trial court denies his petition, he again petitions for review to the Arizona Supreme Court which again reviews the case. From there, he has the opportunity to again petition the U.S. Supreme Court for a Writ of Certiorari.

Mr. McMurdie advised that, at this point, everything in the State of Arizona in capital litigation is essentially concluded but the defendant can now turn to the federal courts and can file a petition for a Writ of Habeas Corpus in the federal district court of Arizona where he will again raise the arguments that he has presented in the State courts. Once the federal district court denies the petition for Writ of Habeas Corpus, he can appeal to the 9th Circuit Court of Appeals in San Francisco, and if unsuccessful, can again petition for a Writ of Certiorari to the U.S. Supreme Court.

Mr. McMurdie stated that after this process, which can last over ten years, it is the position of the Arizona Attorney General that it is time to move on to another case and that the defendant should be executed. During the process, the defendant has had five attorneys who have reviewed his case: the trial attorney, the appellate attorney, the post-conviction relief attorney, and two attorneys

which are appointed when the defendant files his petition for a Writ of Habeas Corpus.

S.B. 1002 addresses a problem the Attorney General's Office is facing in the appellate process of capital cases. He referred to a chart showing the results of capital cases in Arizona since 1973 (Attachment 9). The Arizona Supreme Court reviews capital sentencing independently to determine the existence of aggravation and mitigation, and whether the death penalty is appropriate. If they find an error, they have the option of remanding, reaffirming or reducing to life; however, they have not adopted set standards on when they will remand or when they will reduce to life. This is a cause of great concern in the federal district courts because the Supreme Court is arbitrarily remanding some sentences and not others. If a defendant is successful in claiming that this is an arbitrary practice, the State of Arizona will have to resentence 31 death penalty cases where the Arizona Supreme Court has affirmed the death sentence.

Mr. McMurdie said this legislation sets standards and provides that it is the independent duty on the Arizona Supreme Court to review these cases and determine for itself the propriety of the death sentence. The Attorney General's Office is aware that with this independent review in statute, some of the cases will result in life sentences. He said that is acceptable as a policy matter because it will save resentencing in 31 cases and actually speed up the process because when a capital case is remanded back to the trial court, the defendant gets a whole new sentencing hearing and the entire process is started all over again. The bill also specifies an automatic death warrant once post-conviction relief proceedings have concluded.

Mr. McMurdie also addressed S.B. 1003, post-conviction relief. He said this bill cleans up some errors made in the post-conviction relief legislation and closes a loophole in the law. Currently a defendant can file a successive petition for post-conviction relief days before the scheduled execution. After the entire process is completed, the defendant can ask for a stay of execution and can claim that the statute gives him 180 days to file a new petition. S.B. 1003 changes this to allow 30 days to file on a successive petition. He said the petition actually has to be filed in order to get a stay.

Nancy Swetnam, Legislative Liaison, Arizona Supreme Court, testified that the Chief Justice of the Arizona Supreme Court supports the amended version of S.B. 1002 as passed by the Senate. She noted that the Chief Justice has worked with the Attorney General's Office on the amended language.

Mr. Kaites moved, seconded by Mrs. Graham, that S.B. 1002 do pass. The motion carried by a roll call vote of 7-1-0-3 (Attachment 10).

S.B. 1003, post-conviction relief - DO PASS

Mr. Kaites moved, seconded by Mrs. Gerard, that S.B. 1003 do pass. The motion carried by a roll call vote of 7-0-0-4 (Attachment 11).

S.B. 1110, felony murder; unlawful flight - DO PASS

Mr. Kaites moved, seconded by Mr. Ortega, that S.B. 1110 do pass.

Dominica Minore, Majority Research Analyst, explained that S.B. 1110 adds the offense of unlawful flight from a pursuing law enforcement vehicle to the felony murder rule. If a driver of a motor vehicle wilfully flees or attempts to elude a pursuing law enforcement vehicle and a person is killed during the commission of the offense, the driver is guilty of first degree murder.

Don Isaacson, representing State Fraternal Order of Police (FOP), testified that FOP supports this legislation. Because of the trend that is occurring in criminal activity, law enforcement believes this change is necessary. He stated that this legislation is supported by the Fraternal Order of Police, the Arizona Criminal Justice Commission, the Chiefs of Police Association, and other law enforcement agencies.

Mr. Newman said he is concerned about this bill because he views it as a large expansion of the felony murder rule. He asked how many cases will fall under this. Mr. Isaacson reiterated that flight is an increasing trend, particularly among youthful offenders. He said this legislation serves two purposes: to punish those who clearly put other people's lives at risk and to deter others from further conduct.

In response to Mr. Newman's comment, Mr. Isaacson expressed doubt that all prosecutions under this legislation would result in a death sentence. He said that there may be some extreme circumstances that would lead to a death penalty.

Mr. Kaites asked if most states include similar language, either implicitly or explicitly, in their the felony murder rule. Mr. Isaacson replied in the affirmative.

Chairman Baird announced that he had Request to Speak forms from the following people who are in favor of Senate Bill 1110:

Jerry Landau, Chief, Controlled Substances Division, Maricopa County  
Attorney's Office  
Rex Holgerson, Executive Director, Arizona Criminal Justice Commission  
Bill Everson, representing himself, Mesa  
Officer Thomas Denning, representing himself, Higley  
Sergeant Brian Kolb, President, Associated Highway Patrolmen  
Ballard Bullion, President, Arizona Fraternal Order of Police  
Jim Skelly, representing Arizona County Attorneys and Sheriffs Association  
Ed Wren, Legislative Consultant, Phoenix Law Enforcement Association and  
Arizona Highway Patrol Association  
Michael Grassia, State Fraternal Order of Police

Question was called for on Mr. Kaites' motion that S.B. 1110 do pass. The motion carried by a roll call vote of 7-1-0-3 (Attachment 12).

S.B. 1317, elections; candidate vacancy - DO PASS

Dominica Minore, Majority Research Analyst, explained that S.B. 1317 authorizes a political party to nominate a candidate to fill a candidate vacancy due to death, mental incapacity or voluntary withdrawal. It provides that candidates who ran in the preceding primary election for that office and fail to be nominated or who were write-in candidates can be nominated. If a candidate

withdraws after the official printing of ballots, the election inspector must post the notice of withdrawal in each polling place.

Mrs. Gerard commented that the changes drafted in this bill appear to be the same as is currently in statute. She said she does not see any major differences and asked why the bill is necessary. Ms. Minore replied that it is clarifying language.

Mr. Kaites asked if it changes the way vacancies for any office are currently filled. Ms. Minore answered that it does not. Mr. Kaites asked if the bill changes how the Board of Supervisors replaces an officeholder who dies or is removed. Ms. Minore replied in the negative.

Chairman Baird stated his understanding of this bill is that if a candidate runs in a primary election and loses, he is not precluded from being nominated by his party to represent his party in the election. Ms. Minore concurred with Chairman Baird and said it also includes write-in candidates.

Mr. Ortega brought up the instance where a person dies after being nominated but before the primary election, nomination is done through the party rather than going through another nominating process. Ms. Minore said this is a vacancy that occurs after the filing of a petition but before the primary or general election.

Discussion ensued on who is allowed to vote for the nomination. Mr. Ortega expressed concern about the bill's language. He explained that, in the Democratic Party, a precinct committeeman who is elected has a vote; a precinct committeeman who is appointed does not have a vote. Chairman Baird advised that, in the Republican Party, precinct committeemen who are elected do have a vote in presidential caucus, but not in other cases. Mrs. Graham also expressed concern about the language of the bill. Mr. Kaites' concern was that this bill reverses the process currently in existence.

Mr. Kaites moved, seconded by Mrs. Gerard, that S.B. 1317 do pass. The motion carried by a roll call vote of 2-0-6-3 (Attachment 13).

Without objection, the meeting adjourned at 10:50 a.m.

  
Joanne Bell, Committee Secretary

(Attachments and tape on file in the Office of the Chief Clerk.)

ARIZONA HOUSE OF REPRESENTATIVES

GUESTS ATTENDING MEETING

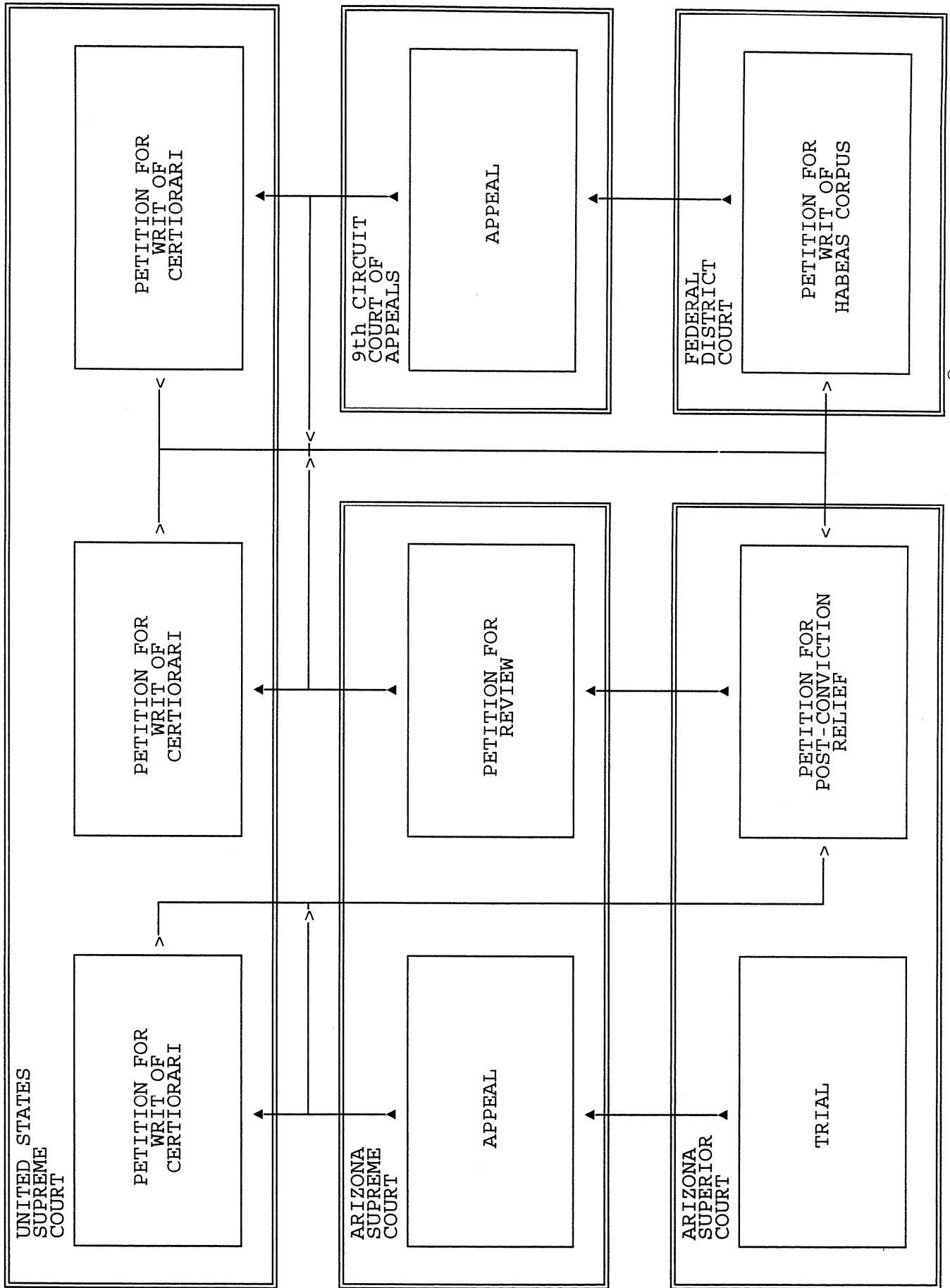
Hearing Room 2

Time 8:30 AM

Date 3/10/94

Meeting JUDICIARY

Name and Title (please print)	Representing	Bill No.
JAMES L. GILLINGS	CONSERVATION LAW ENFORCEMENT	SB 1140
JUDY A. GILLINGS	" " "	SB 1140
NANCY SEGAR		S.B. 1140
RICHARD SEGAR		S.B. 1140
Brian Kenny	Az Archaeology Advisory Comm	SB 1140
Kenneth Dozon	Arizona State Land Dept	SB 1140
Sion Takata	City of Phoenix	SB 1163
Vicky Miel	City of Phoenix	"
Alex Cordova	"	"
Larry Felix	"	"
Charles Gilbert	Az Archaeological Society	SB 1140
Raymond H. Humphreys Dir	Az State Museum (UH)	SB 1140
Nancy Sweetnam	Az Supreme Court	SB 1002
Robert S. Lynch	Irrigation & Electrical Dist Assn	SB 1163
Ken Fairbairn	League of AZ Cities & Towns	1163
Carol Griffith	Az State Parks State Historic Preservation Office	SB 1140
JERRY LANDAU	MEAO	SB 1140



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MAR 10 1994

JUDICIARY

ATTACHMENT 8

**ARIZONA DEATH PENALTY CASES  
ON REVIEW BY THE ARIZONA SUPREME COURT  
CONVICTION AFFIRMED  
BOTH AGGRAVATING AND MITIGATING CIRCUMSTANCES PRESENT**

**TABLE 1. ARIZONA SUPREME COURT  
DID NOT CHANGE  
THE AGGRAVATING OR MITIGATING CIRCUMSTANCES.**

	Through 1/14/93	1/15/93 to 1/11/94	Total Through 1/11/94
A. Death Sentence Affirmed:	53	11	64
B. Death Sentence Reduced to a Life Sentence:	4	1	5
Total:	57	12	69

**TABLE 2. ARIZONA SUPREME COURT  
DID CHANGE  
THE AGGRAVATING OR MITIGATING CIRCUMSTANCES.**

	Through 1/14/93	1/15/93 to 1/11/94	Total Through 1/11/94
A. Death Sentence Affirmed:	27	4	31
B. Death Sentence Reduced to a Life Sentence:	9	1	10
C. Remanded for a Resentencing:	10	1	11
Total:	46	6	52

**TABLE 3. ARIZONA SUPREME COURT  
FOUND ERROR AS A MATTER OF LAW:  
REMANDED FOR RESENTENCING.**

	Through 1/14/93	1/15/93 to 1/11/94	Total Through 1/11/94
A. Remanded for a Resentencing:	16	1	17
Total:	16	1	17
Total All Cases:	119	19	138

MAR 10 1994

JUDICIARY

ATTACHMENT 9

**TABLE 1(A). ARIZONA SUPREME COURT  
DID NOT CHANGE  
THE AGGRAVATING OR MITIGATING CIRCUMSTANCES:  
DEATH SENTENCE AFFIRMED.**

Through 1/14/93

1. State v. Richmond, 114 Ariz. 186, 560 P.2d 41 (1976) (Holohan), *cert. denied*, 433 U.S. 915 (1977).
2. State v. Blazak, 114 Ariz. 199, 560 P.2d 54 (1977) (Struckmeyer).
3. State v. Arnett, 125 Ariz. 201, 608 P.2d 778 (1980) (Cameron).
4. State v. Knapp, 125 Ariz. 503, 611 P.2d 90 (1979) (Hays).
5. State v. Ceja, 126 Ariz. 35, 612 P.2d 491 (1980) (Hays).
6. State v. Bishop, 127 Ariz. 531, 622 P.2d 478 (1980) (Holohan).
7. State v. Britson, 130 Ariz. 380, 636 P.2d 628 (1981) (Gordon).
8. State v. Smith (J.C.), 131 Ariz. 29, 638 P.2d 696 (1981) (Struckmeyer).
9. State v. Gerlaugh, 135 Ariz. 89, 659 P.2d 642 (1983) (Hays).
10. State v. Woratzeck, 134 Ariz. 452, 657 P.2d 865 (1982) (Hays).
11. State v. Zaragoza, 135 Ariz. 63, 659 P.2d 22 (1983) (Gordon), *cert. denied*, 462 U.S. 1124 (1983).
12. State v. Adamson, 136 Ariz. 250, 665 P.2d 972 (1983) (Gordon), *cert. denied*, 464 U.S. 865 (1983).
13. State v. Richmond, 136 Ariz. 312, 666 P.2d 57 (1983) (Holohan), *cert. denied*, 464 U.S. 986 (1983).
14. State v. Harding, 137 Ariz. 278, 670 P.2d 383 (1983) (Cameron), *cert. denied*, 465 U.S. 1013 (1984).
15. State v. Lambright, 138 Ariz. 63, 673 P.2d 1 (1983) (Cameron), *cert. denied*, 469 U.S. 892 (1984).
16. State v. Smith (Robert), 138 Ariz. 79, 673 P.2d 17 (1983) (Cameron), *cert. denied*, 465 U.S. 1074 (1984).
17. State v. Summerlin, 138 Ariz. 426, 675 P.2d 686 (1983) (Cameron).
18. State v. Libberton, 141 Ariz. 132, 685 P.2d 1284 (1984) (Hays).
19. State v. Fisher, 141 Ariz. 227, 686 P.2d 750 (1984) (Gordon), *cert. denied*, 469 U.S. 1066 (1984).
20. State v. Chaney, 141 Ariz. 295, 686 P.2d 1265 (1984) (Hays).
21. State v. Harding, 141 Ariz. 492, 687 P.2d 1247 (1984) (Hays).
22. State v. Villafuerte, 142 Ariz. 323, 690 P.2d 42 (1984) (Cameron), *cert. denied*, 469 U.S. 1230 (1985).
23. State v. Clabourne, 142 Ariz. 335, 690 P.2d 54 (1984) (Cameron).
24. State v. Gillies, 142 Ariz. 564, 691 P.2d 1059 (1984) (Hays), *cert. denied*, 470 U.S. 1059 (1985).
25. State v. Hensley, 142 Ariz. 598, 691 P.2d 689 (1984) (Gordon).
26. State v. Carriger, 143 Ariz. 142, 692 P.2d 991 (1984) (Hays), *cert. denied*, 471 U.S. 1111 (1985).
27. State v. Nash, 143 Ariz. 392, 694 P.2d 222 (1985) (Gordon), *cert. denied*, 471 U.S. 1143 (1985).
28. State v. Gerlaugh, 144 Ariz. 449, 698 P.2d 694 (1985) (Hays).
29. State v. Roscoe, 145 Ariz. 212, 700 P.2d 1312 (1984) (Feldman), *cert. denied*, 471 U.S. 1094 (1985).
30. State v. Martinez-Villareal, 145 Ariz. 441, 702 P.2d 670 (1985) (Holohan), *cert. denied*, 474 U.S. 975 (1985).
31. State v. McMurtrey, 151 Ariz. 105, 726 P.2d 202 (1986) (Cameron), *cert. denied*, 480 U.S. 911 (1987).
32. State v. Wallace, 151 Ariz. 362, 728 P.2d 232 (1986) (Hays), *cert. denied*, 483 U.S. 1011 (1987).
33. State v. LaGrand (Karl), 152 Ariz. 483, 733 P.2d 1066 (1987) (Gordon), *cert. denied*, 484 U.S. 872 (1987).
34. State v. LaGrand (Walter), 153 Ariz. 21, 734 P.2d 563 (1987) (Gordon), *cert. denied*, 484 U.S. 872 (1987).
35. State v. Moorman, 154 Ariz. 578, 744 P.2d 679 (1987) (Feldman).
36. State v. Beaty, 158 Ariz. 232, 762 P.2d 519 (1988) (Cameron), *cert. denied*, 491 U.S. 910 (1989).
37. State v. Vickers, 159 Ariz. 532, 768 P.2d 1177 (1989) (Cameron), *cert. denied*, 110 S. Ct. 3298 (1990).
38. State v. Walton, 159 Ariz. 571, 769 P.2d 1017 (1989) (Holohan), *aff'd*, 110 S. Ct. 3047 (1990).
39. State v. McCall, 160 Ariz. 119, 770 P.2d 1165 (1989) (Moeller), *cert. denied*, 110 S. Ct. 3289 (1990).
40. State v. Wallace, 160 Ariz. 424, 773 P.2d 983 (1989) (Fernandez), *cert. denied*, 110 S. Ct. 1513 (1990).
41. State v. Serna, 163 Ariz. 260, 787 P.2d 1056 (1990) (Moeller).
42. State v. Washington, 165 Ariz. 51, 796 P.2d 853 (1990) (Roll), *cert. denied*, 111 S. Ct. 1091 (1991).
43. State v. Comer, 165 Ariz. 413, 799 P.2d 333 (1990) (Contreras), *cert. denied*, 111 S. Ct. 1404 (1991).

44. State v. Williams, 166 Ariz. 132, 800 P.2d 1240 (1987) (Feldman), *cert. denied*, 111 S. Ct. 2043 (1991).
45. State v. Amaya-Ruiz, 166 Ariz. 152, 800 P.2d 1260 (1990) (Corcoran), *cert. denied*, 111 S. Ct. 2044 (1991).
46. State v. Stanley, 167 Ariz. 519, 809 P.2d 944 (1991) (Hathaway), *cert. denied*, 112 S. Ct. 660 (1991).
47. State v. Lavers, 168 Ariz. 376, 814 P.2d 333 (1991) (Gordon), *cert. denied*, 112 S. Ct. 343 (1991).
48. State v. White, 168 Ariz. 500, 815 P.2d 869 (1991) (Cameron), *cert. denied*, 112 S. Ct. 1199 (1992).
49. State v. Cook, 170 Ariz. 40, 821 P.2d 731 (1991) (Feldman).
50. State v. Greenway, 170 Ariz. 155, 823 P.2d 22 (1991) (Cameron).
51. State v. Rossi, 171 Ariz. 276, 830 P.2d 797 (1992) (Moeller).
52. State v. Atwood, 171 Ariz. 576, 832 P.2d 593 (1992) (Corcoran).
53. State v. Hill, 174 Ariz. 313, 848 P.2d 1375 (1993) (Feldman).

1/15/93 through 1/12/94

54. State v. Kiles, 175 Ariz. 358, 857 P.2d 1212 (1993) (Corcoran).
55. State v. Lopez (Samuel Villegas), 175 Ariz. 407, 857 P.2d 1261 (1993) (Moeller).
56. State v. Landrigan, \_\_\_ Ariz. \_\_\_, 859 P.2d 111 (1993) (Zlacket).
57. State v. Herrera (Sr.), \_\_\_ Ariz. \_\_\_, 859 P.2d 119 (1993) (Corcoran).
58. State v. Herrera (Jr.), \_\_\_ Ariz. \_\_\_, 859 P.2d 131 (1993) (Cameron).
59. State v. Spencer, \_\_\_ Ariz. \_\_\_, 859 P.2d 146 (1993) (Martone).
60. State v. Schurz, \_\_\_ Ariz. \_\_\_, 859 P.2d 156 (1993) (Martone).
61. State v. Runningeagle, \_\_\_ Ariz. \_\_\_, 859 P.2d 169 (1993) (Martone).
62. State v. West, 149 Ariz. Adv. Rep. 5 (Sept. 30, 1993) (Moeller).
63. State v. Apelt (Michael), 151 Ariz. Adv. Rep. 3 (Nov. 9, 1993) (Martone).
64. State v. Apelt (Rudi), 151 Ariz. Adv. Rep. 15 (Nov. 9, 1993) (Martone).

**TABLE 1(B). ARIZONA SUPREME COURT  
DID NOT CHANGE  
THE AGGRAVATING OR MITIGATING CIRCUMSTANCES:  
DEATH SENTENCE REDUCED TO A LIFE SENTENCE.**

Through 1/14/93

1. State v. Valencia, 132 Ariz. 248, 645 P.2d 239 (1982) (Cameron).
2. State v. Stevens, 158 Ariz. 595, 764 P.2d 724 (1988) (Lacagnina).
3. State v. Mauro, 159 Ariz. 186, 766 P.2d 59 (1988) (Corcoran).
4. State v. Jimenez, 165 Ariz. 444, 779 P.2d 785 (1990) (Corcoran).

1/15/93 through 1/12/94

5. State v. Stuard, 152 Ariz. Adv. Rep. 21 (Nov. 18, 1993) (Feldman).

**TABLE 2(A). ARIZONA SUPREME COURT  
DID CHANGE  
THE AGGRAVATING OR MITIGATING CIRCUMSTANCES:  
DEATH SENTENCE AFFIRMED.**

Through 1/14/93

1. State v. Steelman, 126 Ariz. 19, 612 P.2d 475 (1980) (Cameron), *cert. denied*, 449 U.S. 913 (1980).
2. State v. Clark, 126 Ariz. 428, 616 P.2d 888 (1980) (Holohan), *cert. denied*, 449 U.S. 1067 (1980).
3. State v. Greenawalt, 128 Ariz. 150, 624 P.2d 828 (1981) (Struckmeyer), *cert. denied*, 454 U.S. 882 (1981).
4. State v. Vickers, 129 Ariz. 506, 633 P.2d 315 (1981) (Cameron).
5. State v. Tison (Ricky), 129 Ariz. 526, 633 P.2d 335 (1981) (Struckmeyer), *cert. denied*, 459 U.S. 882 (1982).
6. State v. Tison (Ray), 129 Ariz. 546, 633 P.2d 355 (1981) (Struckmeyer), *cert. denied*, 459 U.S. 882 (1982).
7. State v. Schad, 129 Ariz. 557, 633 P.2d 366 (1981) (Hays), *cert. denied*, 455 U.S. 983 (1982).
8. State v. Ortiz, 131 Ariz. 195, 639 P.2d 1020 (1981) (Gordon), *cert. denied*, 456 U.S. 984 (1982).
9. State v. Blazak, 131 Ariz. 598, 643 P.2d 694 (1982) (Cameron), *cert. denied*, 459 U.S. 882 (1982).
10. State v. Gretzler, 135 Ariz. 42, 659 P.2d 1 (1983) (Cameron), *cert. denied*, 461 U.S. 971 (1983).
11. State v. Jeffers, 135 Ariz. 404, 661 P.2d 1105 (1983) (Holohan), *cert. denied*, 464 U.S. 865 (1983).
12. State v. McCall, 139 Ariz. 147, 677 P.2d 920 (1983) (Gordon), *cert. denied*, 467 U.S. 1220 (1984).
13. State v. James, 141 Ariz. 141, 685 P.2d 1293 (1984) (Hays), *cert. denied*, 469 U.S. 990 (1984).
14. State v. Smith (Roger), 141 Ariz. 510, 687 P.2d 1265 (1984) (Hays).
15. State v. Tison (Ricky), 142 Ariz. 446, 690 P.2d 747 (1984) (Hays), *vacated*, 481 U.S. 137 (1987).
16. State v. Tison (Ray), 142 Ariz. 454, 690 P.2d 755 (1984) (Hays), *vacated*, 481 U.S. 137 (1987).
17. State v. Poland (Patrick), 144 Ariz. 388, 698 P.2d 183 (1985) (Cameron), *aff'd*, 476 U.S. 147 (1986).
18. State v. Poland (Michael), 144 Ariz. 412, 698 P.2d 207 (1985) (Cameron), *aff'd*, 476 U.S. 147 (1986).
19. State v. Bracy, 145 Ariz. 520, 703 P.2d 464 (1985) (Gordon), *cert. denied*, 474 U.S. 1110 (1986).
20. State v. Hooper, 145 Ariz. 538, 703 P.2d 482 (1985) (Gordon), *cert. denied*, 474 U.S. 1073 (1986).
21. State v. Smith (Bernard), 146 Ariz. 491, 707 P.2d 289 (1985) (Feldman).
22. State v. Correll, 148 Ariz. 468, 715 P.2d 721 (1986) (Cameron).
23. State v. Castaneda, 150 Ariz. 382, 724 P.2d 1 (1986) (Cameron).
24. State v. Arnett, 158 Ariz. 15, 760 P.2d 1064 (1988) (Cameron).
25. State v. Schad, 163 Ariz. 411, 788 P.2d 1162 (1989) (Holohan), *aff'd*, 111 S. Ct. 2491 (1991).
26. State v. Robinson, 165 Ariz. 51, 796 P.2d 853 (1990) (Roll), *cert. denied*, 111 S. Ct. 1025 (1991).
27. State v. Brewer, 170 Ariz. 486, 826 P.2d 783 (1992) (Corcoran).

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28. State v. Bible, \_\_\_ Ariz. \_\_\_, 858 P.2d 1152 (1993) (Feldman).
29. State v. Styers, 154 Ariz. Adv. Rep. 32 (Dec. 21, 1993) (Moeller).
30. State v. Milke, 154 Ariz. Adv. Rep. 39 (Dec. 21, 1993) (Moeller).
31. State v. Scott, 154 Ariz. Adv. Rep. 47 (Dec. 21, 1993) (Moeller).

**TABLE 2(B). ARIZONA SUPREME COURT  
DID CHANGE  
THE AGGRAVATING OR MITIGATING CIRCUMSTANCES:  
DEATH SENTENCE REDUCED TO A LIFE SENTENCE.**

Through 1/14/93

1. State v. Doss, 116 Ariz. 156, 568 P.2d 1054 (1977) (Holohan).
2. State v. Brookover, 124 Ariz. 38, 601 P.2d 1322 (1979) (Cameron).
3. State v. Watson, 129 Ariz. 60, 628 P.2d 943 (1981) (Cameron), *cert. denied*, 456 U.S. 981 (1982).
4. State v. Graham, 135 Ariz. 209, 660 P.2d 460 (1983) (Hays).
5. State v. McDaniel, 136 Ariz. 188, 665 P.2d 70 (1983) (Gordon).
6. State v. Johnson, 147 Ariz. 395, 710 P.2d 1050 (1985) (Feldman).
7. State v. Rockwell, 161 Ariz. 5, 775 P.2d 1069 (1989) (Moeller).
8. State v. Marlow, 163 Ariz. 65, 786 P.2d 395 (1989) (Foreman).
9. State v. Fierro, 166 Ariz. 539, 804 P.2d 72 (1990) (Feldman).

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10. State v. Herrera (Mickel), 174 Ariz. 387, 850 P.2d 100 (1993).

**TABLE 2(C). ARIZONA SUPREME COURT  
DID CHANGE  
THE AGGRAVATING OR MITIGATING CIRCUMSTANCES:  
REMANDED FOR RESENTENCING.**

Through 1/14/93

1. State v. Gillies, 135 Ariz. 500, 662 P.2d 1007 (1983) (Hays).
2. State v. McMurtrey, 136 Ariz. 93, 664 P.2d 637 (1983) (Gordon).
3. State v. McMurtrey, 143 Ariz. 71, 691 P.2d 1099 (1984) (Cameron).
4. State v. Rossi, 146 Ariz. 359, 706 P.2d 371 (1985) (Gordon).
5. State v. Wallace, 151 Ariz. 362, 728 P.2d 232 (1986) (Hays), *cert. denied*, 483 U.S. 1011 (1987).
6. State v. Rossi, 154 Ariz. 245, 741 P.2d 1223 (1987) (Gordon).
7. State v. Lopez (Samuel V.), 163 Ariz. 108, 786 P.2d 959 (1990) (Moeller).
8. State v. Hinchey, 165 Ariz. 432, 799 P.2d 352 (1990) (Gordon), *cert. denied*, 111 S. Ct. 1589 (1991).
9. State v. Schaaf, 169 Ariz. 323, 819 P.2d 909 (1991) (Gordon).
10. State v. Medrano, 173 Ariz. 393, 844 P.2d 560 (1992) (Zlaket).

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11. State v. Henry, 147 Ariz. Adv. Rep. 3 (Sept. 2, 1993) (Zlaket).

**TABLE 3. ARIZONA SUPREME COURT  
FOUND ERROR AS A MATTER OF LAW:  
REMANDED FOR RESENTENCING.**

Through 1/14/93

1. State v. Watson, 114 Ariz. 1, 559 P.2d 121 (1976) (Cameron, *cert. denied*, 430 U.S. 986 (1977)).
2. State v. Evans, 120 Ariz. 158, 584 P.2d 1149 (1978) (Holohan).
3. State v. Steelman, 120 Ariz. 301, 585 P.2d 1213 (1978) (Cameron).
4. State v. Watson, 120 Ariz. 441, 586 P.2d 1253 (1978) (Cameron), *cert. denied*, 440 U.S. 924 (1979).
5. State v. Valencia, 121 Ariz. 191, 589 P.2d 434 (1979) (Cameron).
6. State v. Edwards, 122 Ariz. 206, 594 P.2d 72 (1979) (Hays), *rev'd*, 451 U.S. 477 (1981).
7. State v. Smith (J.C.), 123 Ariz. 231, 599 P.2d 187 (1979) (Gordon).
8. State v. Valencia, 124 Ariz. 139, 602 P.2d 807 (1979) (Hays).
9. State v. Gretzler, 126 Ariz. 60, 612 P.2d 1023 (1980) (Cameron).
10. State v. Carriger, 132 Ariz. 301, 645 P.2d 816 (1982) (Cameron).
11. State v. Smith (Roger), 136 Ariz. 273, 665 P.2d 995 (1983) (Hays).
12. State v. Leslie, 136 Ariz. 463, 666 P.2d 1072 (1983) (Hays).
13. State v. Hensley, 137 Ariz. 80, 669 P.2d 58 (1983) (Feldman).
14. State v. Jordan, 137 Ariz. 504, 672 P.2d 169 (1983) (Hays).
15. State ex rel. Corbin v. Superior Court (Sylvester Smith), 155 Ariz. 560, 748 P.2d 1184 (1987) (Feldman).
16. State v. Tison (Ricky & Raymond), 160 Ariz. 501, 774 P.2d 805 (1989) (per curiam).

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17. State v. Schackart, \_\_\_ Ariz. \_\_\_, 858 P.2d 639 (1993) (Zlacket).



