

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

**CHAPTER 144**  
**SENATE BILL 1311**

AN ACT

AMENDING SECTIONS 13-4073 AND 13-4074, ARIZONA REVISED STATUTES; REPEALING SECTIONS 13-4081, 13-4082, 13-4083, 13-4084 AND 13-4085, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 38, ARTICLE 22, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 13-4081, 13-4082, 13-4083 AND 13-4084; RELATING TO MATERIAL WITNESSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-4073, Arizona Revised Statutes, is amended to  
3 read:

4 13-4073. Refusal to attend, be sworn or testify as contempt

5 ~~A. Disobedience to~~ FAILURE TO COMPLY WITH a subpoena or refusal to  
6 be sworn or to testify as a witness may be punished by the court or  
7 magistrate as a contempt.

8 ~~B. A witness disobeying a subpoena issued on behalf of defendant,~~  
9 ~~unless he shows good cause for his non-attendance, is liable to defendant~~  
10 ~~in the sum of one hundred dollars, which may be recovered in a civil~~  
11 ~~action, if defendant is damaged by the non-attendance of such witness.~~

12 Sec. 2. Section 13-4074, Arizona Revised Statutes, is amended to  
13 read:

14 13-4074. Attendance of witness; liability for nonattendance;  
15 appearance bond forfeiture

16 A. ~~When~~ A witness WHO has been subpoenaed TO APPEAR in a criminal  
17 action, ~~the witness shall attend and be present in the court before which~~  
18 ~~he has been summoned at the time named in the subpoena and from time to~~  
19 ~~time~~ APPEAR AS DIRECTED AND AT ANY ADDITIONAL TIMES AS THE COURT DIRECTS  
20 without further subpoena, until finally discharged by the court.

21 B. ~~Should~~ IF the witness WHO IS subpoenaed ~~neglect~~ FAILS to attend  
22 and be present in court AS DIRECTED, the cost of ~~procuring~~ SECURING the  
23 attendance of ~~such~~ THE witness ~~when required by the court,~~ shall be ~~taxed~~  
24 ASSESSED against the witness unless excused by the court for good cause  
25 ~~shown, and if the witness has entered into an undertaking to appear, the~~  
26 ~~undertaking is forfeited in the same manner as undertakings of bail.~~

27 C. IF THE WITNESS DEPOSITS AN APPEARANCE BOND AND SUBSEQUENTLY  
28 FAILS TO APPEAR, THE BOND MAY BE FORFEITED PURSUANT TO THE ARIZONA RULES  
29 OF CRIMINAL PROCEDURE.

30 Sec. 3. Repeal

31 Sections 13-4081, 13-4082, 13-4083, 13-4084 and 13-4085, Arizona  
32 Revised Statutes, are repealed.

33 Sec. 4. Title 13, chapter 38, article 22, Arizona Revised Statutes,  
34 is amended by adding new sections 13-4081, 13-4082, 13-4083 and 13-4084,  
35 to read:

36 13-4081. Definition of "material witness"

37 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, "MATERIAL  
38 WITNESS" MEANS A WITNESS IN A CRIMINAL MATTER WHO IS CALLED BY EITHER THE  
39 STATE OR THE DEFENDANT AND WHOSE TESTIMONY IS NECESSARY FOR A FAIR  
40 DETERMINATION OF AN ISSUE IN THE CASE.

41 13-4082. Material witness bond

42 IN A GRAND JURY PROCEEDING OR PENDING CRIMINAL ACTION, THE STATE OR  
43 THE DEFENDANT MAY CERTIFY BY MOTION THAT THE PRESENCE OF A MATERIAL  
44 WITNESS IS REQUIRED. IF THE COURT FINDS THAT A MATERIAL WITNESS IS  
45 UNLIKELY TO APPEAR OR TESTIFY, THE COURT MAY REQUIRE THE MATERIAL WITNESS

1 TO APPEAR AND POST A SECURED OR UNSECURED APPEARANCE BOND. ON PROPER  
2 NOTICE TO THE MATERIAL WITNESS, THE COURT MAY MODIFY THE REQUIREMENTS OF  
3 THE APPEARANCE BOND WHEN NECESSARY TO ENSURE THE MATERIAL WITNESS WILL  
4 APPEAR AND TESTIFY AS DIRECTED.

5 13-4083. Material witness warrant; detention; release

6 A. IF THE COURT FINDS THAT A MATERIAL WITNESS WILFULLY FAILED TO  
7 COMPLY WITH A PROPERLY SERVED SUBPOENA OR ORDER TO APPEAR, THE COURT MAY  
8 AUTHORIZE A LAW ENFORCEMENT AGENCY TO DETAIN THE MATERIAL WITNESS UNTIL  
9 THE WITNESS CAN BE BROUGHT BEFORE THE COURT. A DETAINED MATERIAL WITNESS  
10 MUST BE BROUGHT BEFORE THE COURT ON THE SAME OR NEXT COURT DATE.

11 B. A MATERIAL WITNESS WHO IS DETAINED MAY BE KEPT IN A PHYSICALLY  
12 SEPARATE SECTION OR BE ADMINISTRATIVELY SEGREGATED FROM ANY PERSON WHO IS  
13 CHARGED WITH, ADJUDICATED DELINQUENT FOR OR CONVICTED OF A CRIMINAL  
14 OFFENSE. IF THE MATERIAL WITNESS IS A JUVENILE, THE WITNESS MAY BE  
15 DETAINED IN A JUVENILE DETENTION CENTER OR A JAIL PURSUANT TO SECTION  
16 8-305.

17 C. IF, AFTER THE MATERIAL WITNESS IS GIVEN AN OPPORTUNITY TO BE  
18 HEARD, THE COURT FINDS THAT A DETAINED MATERIAL WITNESS IS UNLIKELY TO  
19 COMPLY WITH A FUTURE SUBPOENA OR ORDER TO APPEAR, THE COURT MAY ORDER A  
20 SECURED APPEARANCE BOND OR AN UNSECURED APPEARANCE BOND OR MAY IMPOSE  
21 ELECTRONIC MONITORING UNTIL THE MATERIAL WITNESS TESTIFIES. THE COURT MAY  
22 ALSO ORDER THE CONTINUED DETENTION OF THE MATERIAL WITNESS AND PROCEED  
23 PURSUANT TO SECTION 13-4084.

24 D. FOLLOWING THE COMPLETION OF TESTIMONY OR A DEPOSITION, THE COURT  
25 SHALL RELEASE THE MATERIAL WITNESS FROM DETENTION AND FROM ALL OBLIGATIONS  
26 IMPOSED BY THE COURT. THE COURT MAY HOLD THE RELEASE OF ANY BOND UNTIL  
27 THE FINAL DISPOSITION OF ANY CONTEMPT PROCEEDINGS.

28 13-4084. Material witness deposition; time limits

29 A. A DETAINED MATERIAL WITNESS MUST EITHER TESTIFY OR BE DEPOSED  
30 WITHIN THREE DAYS AFTER THE COURT'S DETENTION ORDER PURSUANT TO SECTION  
31 13-4083, SUBSECTION C. THE ARIZONA RULES OF CRIMINAL PROCEDURE SHALL  
32 GOVERN ANY DEPOSITION TAKEN PURSUANT TO THIS SECTION. THE ARIZONA RULES  
33 OF EVIDENCE SHALL GOVERN THE USE OR ADMISSIBILITY OF ANY DEPOSITION TAKEN  
34 PURSUANT TO THIS SECTION.

35 B. IF A MATERIAL WITNESS IS NOT DEPOSED WITHIN THREE DAYS AFTER A  
36 COURT'S ORDER PURSUANT TO SECTION 13-4083, SUBSECTION C, THE MATERIAL  
37 WITNESS SHALL BE RELEASED FROM DETENTION.

APPROVED BY THE GOVERNOR APRIL 29, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2019.