

CHECKLIST FOR PROSECUTORS: CAPITAL CASES (TRIAL)

Fact Sheet

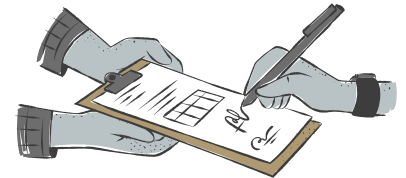


OVERVIEW

During trial in a capital case, surviving victims face several challenges. Trial in a capital case proceeds differently than with other prosecutable offenses. Prosecutors should consider and anticipate potential challenges facing victim family members during the course of a trial.

DISCLAIMER: The cited material pertains primarily to Arizona statute and law; however, many states have similar victim rights laws. Additionally, this fact sheet is intended to share **model practices** in this area. Below are some examples to consider when navigating the capital litigation process, regardless of jurisdiction.

MODEL PRACTICE CHECKLIST (TRIAL)



- ☐ Capital case trial: three phases each of which typically involve a jury: **guilt, aggravation/mitigation, and penalty**
- ☐ Guilt phase does not vary from typical trial other than focus on preserving the record to withstand appellate review and scrutiny
- ☐ After conviction, aggravation phase of trial to determine whether sufficient aggravating factors support capital punishment. Meet with surviving victims to confirm that they may be heard and present information relevant to rebut mitigation evidence.[1] Confirm limitations on what can be presented and focus on victim relationship with surviving victim. If unduly prejudicial remarks are presented at the aggravation phase, the result may lead to a finding that the surviving victim remarks are fundamentally unfair
- ☐ If aggravation factors have been proven, trial shifts to penalty phase. Surviving victims may present information about the deceased victim and impact on surviving victims/family members. Surviving victims may present information in the form of an impact statement in any format to the trier of fact.[2] Remind surviving victims to avoid making comments about what sentence to impose; such comments "are not constitutionally relevant in death penalty cases." [3]

[1] A.R.S. §13-752(R).

[2] A.R.S. §13-752(R).

[3] *Lynn v. Reinstein*, 205 Ariz. 186, 191, 68 P.3d 412, 418 (2003).

MODEL PRACTICE CHECKLIST (TRIAL, CONT'D)



Differences in allocution at sentencing; impact statements from survivors about deceased characteristics and impact on victim's family but NOT on sentencing.[4]

[4] Ariz. R. Crim P. 19.1(e)(3); see also A.R.S. §13-752(R).