



**FLORIDA RULES OF CRIMINAL PROCEDURE
SECTION XV
[ALL-IN-ONE DOCUMENT]**

EXECUTION OF SENTENCE

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FLORIDA RULES OF CRIMINAL PROCEDURE

XV EXECUTION OF SENTENCE

RULES: 3.810 through 3.820



RULE 3.810 | COMMITMENT OF DEFENDANT; DUTY OF SHERIFF

On pronouncement of a sentence imposing a penalty other than a fine only or death, the court shall, unless the execution of the sentence is suspended or stayed, and, in such case, on termination of the suspension or stay, forthwith commit the defendant to the custody of the sheriff under a commitment to which shall be attached a certified copy of the sentence and, unless both are contained in the same instrument if the sentence is imprisonment in the state prison, a certified copy of the judgment of conviction and a certified copy of the indictment or information, and the sheriff shall thereupon, within a reasonable time, if the sheriff is not the proper official to execute the sentence, transfer the defendant, together with the commitment and attached certified copies, to the custody of the official whose duty it is to execute the sentence and shall take from that person a receipt for the defendant and make a return thereof to the court.

Committee Notes

1968 Adoption. Substantially the same as section 922.01, Florida Statutes. There has been added to the rule the requirement that, if the commitment is to the state prison, it shall be accompanied by a certified copy of the judgment of conviction and a certified copy of the indictment or information. (Section 944.18, Florida Statutes, requires a certified copy of the indictment or information to be transmitted to the Division of Corrections; the Division of Corrections should also have a certified copy of the judgment.)

1972 Amendment. Same as prior rule.



RULE 3.811 | INSANITY AT TIME OF EXECUTION: CAPITAL CASES

(a) Insanity to Be Executed. A person under sentence of death shall not be executed while insane to be executed.

(b) Insanity Defined. A person under sentence of death is insane for purposes of execution if the person lacks the mental capacity to understand the fact of the impending execution and the reason for it.

(c) Stay of Execution. No motion for a stay of execution pending hearing, based on grounds of the prisoner's insanity to be executed, shall be entertained by any court until such time as the Governor of Florida shall have held appropriate proceedings for determining the issue pursuant to the appropriate Florida Statutes.

(d) Motion for Stay after Governor's Determination of Sanity to Be Executed. On determination of the Governor of Florida, subsequent to the signing of a death warrant for a prisoner under sentence of death and pursuant to the applicable Florida Statutes relating to insanity at time of execution, that the prisoner is sane to be executed, counsel for the prisoner may move for a stay of execution and a hearing based on the prisoner's insanity to be executed.

(1) The motion shall be filed in the circuit court of the circuit in which the execution is to take place and shall be heard by one of the judges of that circuit or such other judge as shall be assigned by the chief justice of the supreme court to hear the motion. The state attorney of the circuit shall represent the State of Florida in any proceedings held on the motion.

(2) The motion shall be in writing and shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the prisoner is insane to be executed.

(3) Counsel for the prisoner shall file, along with the motion, all reports of experts that were submitted to the governor pursuant to the statutory procedure for executive determination of sanity to be executed. If any of the evidence is not available to counsel for the prisoner, counsel shall attach to the motion an affidavit so stating, with an explanation of why the evidence is unavailable.



(4) Counsel for the prisoner and the state may submit such other evidentiary material and written submissions including reports of experts on behalf of the prisoner as shall be relevant to determination of the issue.

(5) A copy of the motion and all supporting documents shall be served on the Florida Department of Legal Affairs and the state attorney of the circuit in which the motion has been filed.

(e) Order Granting. If the circuit judge, upon review of the motion and submissions, has reasonable grounds to believe that the prisoner is insane to be executed, the judge shall grant a stay of execution and may order further proceedings which may include a hearing pursuant to rule 3.812.

Committee Notes

1988 Adoption. This rule is not intended to preclude the Office of the Attorney General or the state attorney of the circuit in which the trial was held from appearing on behalf of the State of Florida under circumstances when permitted by law.



RULE 3.812 | HEARING ON INSANITY AT TIME OF EXECUTION: CAPITAL CASES

(a) Hearing on Insanity to Be Executed. The hearing on the prisoner's insanity to be executed shall not be a review of the governor's determination, but shall be a hearing de novo.

(b) Issue at Hearing. At the hearing the issue shall be whether the prisoner presently meets the criteria for insanity at time of execution, that is, whether the prisoner lacks the mental capacity to understand the fact of the pending execution and the reason for it.

(c) Procedure. The court may do any of the following as may be appropriate and adequate for a just resolution of the issues raised:

- (1) require the presence of the prisoner at the hearing;
- (2) appoint no more than 3 disinterested mental health experts to examine the prisoner with respect to the criteria for insanity to be executed and to report their findings and conclusions to the court; or
- (3) enter such other orders as may be appropriate to effectuate a speedy and just resolution of the issues raised.

(d) Evidence. At hearings held pursuant to this rule, the court may admit such evidence as the court deems relevant to the issues, including but not limited to the reports of expert witnesses, and the court shall not be strictly bound by the rules of evidence.

(e) Order. If, at the conclusion of the hearing, the court shall find, by clear and convincing evidence, that the prisoner is insane to be executed, the court shall enter its order continuing the stay of the death warrant; otherwise, the court shall deny the motion and enter its order dissolving the stay of execution.

RULE 3.820 | HABEAS CORPUS

(a) Custody Pending Appeal of Order of Denial. When a defendant has been sentenced, and is actually serving the sentence, and has not appealed from the judgment or sentence, but seeks a release from imprisonment by habeas corpus proceedings, and the writ has been discharged after it has been issued, the custody of the prisoner shall not be disturbed, pending review by the appellate court.

(b) Custody Pending Appeal of Order Granting. Pending review of a decision discharging a prisoner on habeas corpus, the prisoner shall be discharged on bail, with sureties to be approved as other bail bonds are approved for the prisoner's appearance to answer and abide by the judgment of the appellate court.

Committee Notes

1968 Adoption. Same as section 922.03, Florida Statutes.

1972 Amendment. Same as prior rule, but some terminology has been changed.



APPENDIX



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