

REFERENCE TITLE: **postconviction relief proceedings; hourly rate**

State of Arizona
Senate
Fifty-seventh Legislature
First Regular Session
2025

SB 1035

Introduced by
Senator Kavanagh

AN ACT

AMENDING SECTION 13-4041, ARIZONA REVISED STATUTES; RELATING TO APPEALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-4041, Arizona Revised Statutes, is amended to
3 read:

4 13-4041. Fee of counsel assigned in criminal proceeding or
5 insanity hearing on appeal or in postconviction
6 relief proceedings; reimbursement

7 A. Except pursuant to subsection G of this section, if counsel is
8 appointed by the court to represent the defendant in either a criminal
9 proceeding or insanity hearing on appeal, the county in which the court
10 from which the appeal is taken presides shall pay counsel, except that in
11 those appeals where the defendant is represented by a public defender or
12 other publicly funded office, ~~THE COUNTY SHALL NOT SET OR PAY~~ compensation
13 ~~shall not be set or paid~~. Compensation for services rendered on appeal
14 shall be in an amount as the supreme court in its discretion deems
15 reasonable, considering the services performed.

16 B. After the supreme court has affirmed a defendant's conviction
17 and sentence in a capital case, the supreme court or, if authorized by the
18 supreme court, the presiding judge of the county from which the case
19 originated shall appoint counsel to represent the capital defendant in the
20 state postconviction relief proceeding.

21 C. The supreme court shall establish and maintain a list of persons
22 who are qualified to represent capital defendants in postconviction
23 proceedings. The supreme court may establish by rule more stringent
24 standards of competency for the appointment of postconviction counsel in
25 capital cases than are provided by this subsection. The supreme court may
26 refuse to certify an attorney on the list who meets the qualifications
27 established under this subsection or may remove an attorney from the list
28 who meets the qualifications established under this subsection if the
29 supreme court determines that the attorney is incapable or unable to
30 adequately represent a capital defendant. The court shall appoint counsel
31 from the list. Counsel who are appointed from the list shall meet the
32 following qualifications:

33 1. Be a member in good standing of the state bar of Arizona for at
34 least five years immediately preceding the appointment.

35 2. Have practiced in the area of state criminal appeals or
36 postconviction proceedings for at least three years immediately preceding
37 the appointment.

38 3. Not previously have represented the capital defendant in the
39 case either in the trial court or in the direct appeal, unless the
40 defendant and counsel expressly request continued representation and waive
41 all potential issues that are foreclosed by continued representation.

42 D. Before filing a petition, the capital defendant may personally
43 appear before the trial court and waive counsel. If the trial court finds
44 that the waiver is knowing and voluntary, appointed counsel may withdraw.

1 The time limits in which to file a petition shall not be extended due
2 solely to the change from appointed counsel to self-representation.

3 E. If at any time the trial court determines that the capital
4 defendant is not indigent, appointed counsel shall no longer be
5 compensated by public monies and may withdraw.

6 F. Unless counsel is employed by a publicly funded office, counsel
7 appointed to represent a capital defendant in state postconviction relief
8 proceedings shall be paid an hourly rate of not to exceed ~~one hundred~~
9 ~~dollars~~ \$100 per hour UNLESS A HIGHER RATE HAS BEEN APPROVED BY THE COUNTY
10 BOARD OF SUPERVISORS. Monies shall not be paid to court appointed counsel
11 unless either:

12 1. A petition is timely filed.

13 2. If a petition is not filed, a notice is timely filed stating
14 that counsel has reviewed the record and found no meritorious claim.

15 G. The trial court shall compensate appointed counsel from county
16 funds. The court or the court's designee shall review and approve all
17 reasonable fees and costs. If the attorney believes that the court has
18 set an unreasonably low hourly rate or if the court finds that the hours
19 the attorney spent are unreasonable, the attorney may file a special
20 action with the Arizona supreme court. If counsel is appointed in
21 successive postconviction relief proceedings, compensation shall be paid
22 pursuant to section 13-4013, subsection A.

23 H. The county shall request reimbursement for fees it incurs
24 pursuant to subsections F, G and I of this section arising out of the
25 appointment of counsel to represent an indigent capital defendant in a
26 state postconviction relief proceeding. The state shall pay a portion of
27 the fees incurred by the county out of monies appropriated to the supreme
28 court for these purposes. The total amount that may be spent in any
29 fiscal year by this state for indigent capital defense in a state
30 postconviction relief proceeding may not exceed the amount appropriated in
31 the general appropriations act for this purpose, together with additional
32 amounts appropriated by any special legislative appropriation for indigent
33 capital defense. The supreme court shall approve county requests for
34 reimbursement after certification that the amount requested is owed.

35 I. The trial court may authorize additional monies to pay for
36 investigative and expert services that are reasonably necessary to
37 adequately litigate those claims that are not precluded by section
38 13-4232.