

COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1035
(Reference to Senate engrossed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

[~~GREEN STRIKEOUT IN BRACKETS~~] indicates new text removed from statute or previously enacted session law.

[~~Green strikeout in brackets~~] indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<~~Green strikeout in carets~~>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

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

1 supreme court determines that the attorney is incapable or unable to
2 adequately represent a capital defendant. The court shall appoint counsel
3 from the list. Counsel who are appointed from the list shall meet the
4 following qualifications:

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

7 2. Have practiced in the area of state criminal appeals or
8 postconviction proceedings for at least three years immediately preceding
9 the appointment.

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

14 D. Before filing a petition, the capital defendant may personally
15 appear before the trial court and waive counsel. If the trial court finds
16 that the waiver is knowing and voluntary, appointed counsel may withdraw.
17 The time limits in which to file a petition shall not be extended due
18 solely to the change from appointed counsel to self-representation.

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

22 F. Unless counsel is employed by a publicly funded office, counsel
23 appointed to represent a capital defendant in state postconviction relief
24 proceedings shall be paid an hourly rate of not to exceed ~~one hundred~~
25 ~~dollars~~ \$100 per hour UNLESS A HIGHER RATE[, NOT TO EXCEED \$200 PER HOUR.]
26 HAS BEEN APPROVED BY THE COUNTY BOARD OF SUPERVISORS. Monies shall not be
27 paid to court appointed counsel unless either:

28 1. A petition is timely filed.

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

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

39 H. The county shall request reimbursement for fees it incurs
40 pursuant to subsections F, G and I of this section arising out of the
41 appointment of counsel to represent an indigent capital defendant in a
42 state postconviction relief proceeding. The state shall pay a portion of
43 the fees incurred by the county out of monies appropriated to the supreme
44 court for these purposes. The total amount that may be spent in any
45 fiscal year by this state for indigent capital defense in a state
46 postconviction relief proceeding may not exceed the amount appropriated in
47 the general appropriations act for this purpose, together with additional

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1 amounts appropriated by any special legislative appropriation for indigent
2 capital defense. The supreme court shall approve county requests for
3 reimbursement after certification that the amount requested is owed.

4 I. The trial court may authorize additional monies to pay for
5 investigative and expert services that are reasonably necessary to
6 adequately litigate those claims that are not precluded by section
7 13-4232.

8 Enroll and engross to conform

9 Amend title to conform

And, as so amended, it do pass

DAVID LIVINGSTON
CHAIRMAN

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