

Senate Engrossed

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-ninth Legislature  
Second Regular Session  
2010

CHAPTER 109

# **SENATE BILL 1204**

AN ACT

AMENDING SECTION 41-4301, ARIZONA REVISED STATUTES; RELATING TO THE STATE  
CAPITAL POSTCONVICTION PUBLIC DEFENDER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-4301, Arizona Revised Statutes, is amended to  
3 read:

4 41-4301. State capital postconviction public defender; office;  
5 appointment; qualifications; powers and duties

6 A. The state capital postconviction public defender office is  
7 established.

8 B. The state is responsible for funding the state capital  
9 postconviction public defender office, including start-up costs.

10 C. The governor shall appoint the state capital postconviction public  
11 defender and fill any vacancy in the office on the basis of merit alone  
12 without regard to political affiliation from the list of names that are  
13 submitted pursuant to sections 41-4302 and 38-211. The state capital  
14 postconviction public defender serves a four year term and serves until the  
15 appointment and qualification of a successor in office. After appointment,  
16 the state capital postconviction public defender is subject to removal from  
17 office only for good cause as determined by a majority vote of the  
18 nomination, retention and standards commission on indigent defense. A  
19 vacancy shall be filled for the balance of the unexpired term.

20 D. The state capital postconviction public defender shall meet all of  
21 the following criteria:

22 1. Be a member in good standing of the state bar of Arizona or become  
23 a member of the state bar of Arizona within one year after appointment.

24 2. Have been a member of the state bar of Arizona or admitted to  
25 practice in any other state for the five years immediately preceding the  
26 appointment.

27 3. Have had substantial experience in the representation of accused or  
28 convicted persons in criminal or juvenile proceedings.

29 4. Meet or exceed the standards for appointment of counsel in capital  
30 cases under rule 6.8, Arizona rules of criminal procedure, as determined by  
31 the nomination, retention and standards commission on indigent defense.

32 E. The salary of the state capital postconviction public defender  
33 shall equal the annual salary of the chief counsel of the capital litigation  
34 section in the office of the attorney general.

35 F. The state capital postconviction public defender shall:

36 1. Represent any person who is not financially able to employ counsel  
37 in postconviction relief proceedings in state court after a judgment of death  
38 has been rendered. Notwithstanding section 11-584, subsection A, paragraph  
39 1, subdivision (g), after a judgment of death has been rendered, a county  
40 employed indigent defense counsel shall not handle postconviction relief  
41 proceedings in state court unless a conflict exists with the state capital  
42 postconviction public defender and a county employed indigent defense counsel  
43 is appointed.

44 2. Supervise the operation, activities, policies and procedures of the  
45 state capital postconviction public defender office.

1           3. Beginning in fiscal year 2007-2008, submit an annual budget for the  
2 operation of the office to the legislature.

3           4. Not engage in the private practice of law or ~~provide outside~~  
4 ~~counsel to any other attorney outside of the state capital postconviction~~  
5 ~~public defender office~~ REPRESENT A PERSON WHO IS NOT ASSIGNED BY THE SUPREME  
6 COURT.

7           ~~5. Not sponsor or fund training for any other attorney outside of the~~  
8 ~~state capital postconviction public defender office.~~

9           ~~6.~~ 5. Not provide trial or direct appeal assistance to attorneys  
10 outside of the state capital postconviction public defender office. FOR THE  
11 PURPOSES OF THIS PARAGRAPH, "TRIAL OR DIRECT APPEAL ASSISTANCE" DOES NOT  
12 INCLUDE GENERAL TRAINING.

13           ~~7.~~ 6. Not lobby, during working hours, the state legislature or the  
14 Congress of the United States, except as provided by paragraph 3 of this  
15 subsection.

16           ~~8.~~ 7. Allocate personnel and resources to postconviction relief  
17 proceedings so long as there are no conflicts of interest in representation  
18 and all state capital postconviction public defender attorneys are appointed  
19 to postconviction relief cases that are eligible for appointment of counsel  
20 under section 13-4041.

21           G. The state capital postconviction public defender may:

22           1. Accept and spend public and private gifts and grants for use in  
23 improving and enhancing the ability to perform the responsibilities of the  
24 state capital postconviction public defender office pursuant to this chapter.

25           2. Employ not more than three deputies and not more than four other  
26 employees and establish and operate any offices as needed for the proper  
27 performance of the duties of the office.

28           H. For each person represented, the state capital postconviction  
29 public defender office shall request reimbursement from the county in which  
30 the person was convicted for fees it incurs pursuant to this section arising  
31 out of its representation of that person. The county shall pay fifty per  
32 cent of the fees incurred by the state capital postconviction public defender  
33 office not to exceed thirty thousand dollars per case.

APPROVED BY ~~THE~~ GOVERNOR APRIL 20, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 21, 2010.

Passed the House April 14, 2010,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

[Signature]  
Speaker of the House

Cheryl Laube  
Chief Clerk of the House

Passed the Senate February 22, 2010,

by the following vote: 28 Ayes,

2 Nays, 0 Not Voting

[Signature]  
President of the Senate

Charmian Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this  
15 day of April, 2010,

at 2:05 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 20 day of

April, 2010,

at 5:20 o'clock P. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 21<sup>st</sup> day of April, 2010,

at 10:06 o'clock a M.

[Signature]  
Secretary of State

S.B. 1204