

# Fiscal Note

**BILL #** HB 2476

**TITLE:** criminal defendant; attorney fees; acquittal

**SPONSOR:** Kolodin

**STATUS:** As Introduced

**PREPARED BY:** Jordan Johnston

## Description

The bill would permit the courts to award reasonable attorney fees and costs to a criminal defendant who is acquitted on the merits and who hired private counsel.

## Estimated Impact

We estimate the bill could result in up to \$750,000 in additional costs in the Superior Court alone beginning in FY 2025. This assumes 15 acquittals per year for individuals that hired private attorneys and average attorney fees and costs of \$50,000. We expect that the majority of this cost would be borne by counties, but in cases brought by the state Attorney General, the cost could be borne by the state.

## Analysis

According to information published on the Arizona Courts' website, the number of trials and acquittals in county Superior Courts in recent years total as follows: 680 trials and 102 acquittals in FY 2019, 602 trials and 100 acquittals in FY 2020, 306 trials and 46 acquittals in FY 2021, and 428 trials and 56 acquittals in FY 2022. The COVID-19 pandemic likely skewed the typical number of trials and acquittals in both FY 2021 and FY 2022. As such, for the purposes of this analysis we average the number of trials in county courts that resulted in acquittal, which equates to about 505 trials and 76 acquittals on average. The majority of these prosecutions are by the county attorney's office, but in limited cases criminal charges may be brought by the state attorney general in the Superior Court.

Based on our research, approximately 20% of defendants in the 75 largest counties selected private attorneys. Assuming this split, of the 76 acquittals per fiscal year, about 15 hired private counsel. We also found research to suggest that there is no significant difference in conviction rates between public and private counsel.

Attorney fees and costs for trials can vary depending on a wide array of factors, including but not limited to: the length of the trial, the seriousness of the charged offense, the complexity of the legal issues involved, the years of experience of the attorneys, and the type of rate charged (flat or hourly fee). Attorney fees in Arizona, for cases that go to trial, can range anywhere from \$1,000 to over \$100,000 depending on the aforementioned factors involved in the case. Additionally, the actual attorney fees awarded under this bill may differ from the amount charged by the private counsel at the discretion of the judge or jury ruling in the case (who also have the discretion to not award fees). We have used \$50,000 as an average cost in our analysis.

Under the assumptions of 15 acquittals per year with private attorneys and an average attorney cost of \$50,000, we estimate that the bill could result in additional costs from the Superior Court acquittals up to \$750,000 beginning in FY 2025. As stated above, we expect the majority of this cost would be borne by the counties, but in the case of a state attorney general prosecution, the cost would be borne by the state. This cost could be greater if our estimated average attorney fees and costs is ultimately higher, for example due to a complex criminal case.

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In addition, due to the lack of sufficient data, we are unable to estimate the bill's cost to cities.

**Local Government Impact**

In most instances, criminal charges are issued by the respective local jurisdiction (city, town, or county) where the alleged offense occurred. As such, we estimate the impact to counties could be up to \$750,000 beginning in FY 2025. We are unable to estimate the cost to cities due to a lack of sufficient data.