

REFERENCE TITLE: identity theft; factual innocence

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2716

Introduced by
Representatives Pancrazi, Gallardo, Kirkpatrick, Sinema, Thrasher, Senator
Aguirre: Representatives Ableser, Alvarez, Anderson, Brown, Burges, Cajero
Bedford, Campbell CH, Campbell CL, Lopes, Lopez, Lujan, McGuire, Meza,
Miranda B, Prezelski, Rios P, Saradnik, Schapira, Ulmer, Senator Gray L

AN ACT

AMENDING TITLE 12, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 16;
RELATING TO DECLARATION OF INNOCENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 12, chapter 6, Arizona Revised Statutes, is amended
3 by adding article 16, to read:

4 ARTICLE 16. DECLARATION OF INNOCENCE

5 12-761. Factual innocence; judicial determination; procedure

6 A. A PERSON WHO IS A VICTIM OF IDENTITY THEFT MAY PETITION THE
7 SUPERIOR COURT OR THE COURT, ON ITS OWN MOTION OR ON THE APPLICATION OF THE
8 PROSECUTING ATTORNEY, MAY MOVE FOR AN EXPEDITED JUDICIAL DETERMINATION OF A
9 VICTIM'S FACTUAL INNOCENCE IF ANOTHER PERSON IS ARRESTED FOR, CITED FOR,
10 CHARGED WITH, INDICTED FOR OR CONVICTED OF AN OFFENSE INVOLVING IDENTITY
11 THEFT UNDER THE VICTIM'S NAME OR IF THE VICTIM'S NAME HAS BEEN MISTAKENLY
12 ASSOCIATED WITH A RECORD OF A CRIMINAL CONVICTION.

13 B. IN MAKING A JUDICIAL DETERMINATION OF FACTUAL INNOCENCE PURSUANT TO
14 THIS SECTION, THE COURT SHALL CONSIDER DECLARATIONS, AFFIDAVITS, POLICE
15 REPORTS OR OTHER EVIDENCE THAT IS RELEVANT AND RELIABLE INFORMATION THAT IS
16 SUBMITTED BY THE PARTIES OR ORDERED TO BE PART OF THE RECORD BY THE COURT.
17 IF THE COURT DETERMINES THAT THE PETITION IS MERITORIOUS AND THAT THERE IS NO
18 REASONABLE CAUSE TO BELIEVE THE VICTIM COMMITTED THE OFFENSE FOR WHICH THE
19 OTHER PERSON WAS ARRESTED, CITED, CHARGED, INDICTED OR CONVICTED, THE COURT
20 SHALL FIND THE VICTIM FACTUALLY INNOCENT OF THAT OFFENSE AND ISSUE AN ORDER
21 CERTIFYING THIS DETERMINATION.

22 C. IF A COURT ISSUES A DETERMINATION OF FACTUAL INNOCENCE PURSUANT TO
23 THIS SECTION, THE COURT MAY ORDER THAT THE ACCUSED OR CONVICTED PERSON'S NAME
24 AND ASSOCIATED PERSONAL INFORMATION CONTAINED IN COURT RECORDS, FILES AND
25 INDEXES ACCESSIBLE BY THE PUBLIC BE DELETED, SEALED OR LABELED TO SHOW THAT
26 THE INFORMATION IS IMPERSONATED AND DOES NOT REFLECT THE ACCUSED OR CONVICTED
27 PERSON'S TRUE IDENTITY.

28 D. IF THE COURT FINDS THAT ANY INFORMATION SUBMITTED IN SUPPORT OF THE
29 PETITION CONTAINS ANY MATERIAL MISREPRESENTATION OR FRAUD, THE COURT MAY
30 VACATE THE DETERMINATION OF FACTUAL INNOCENCE.