

REFERENCE TITLE: erroneous conviction; damages; tuition assistance

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

SB 1362

Introduced by
Senators Mendez: Alston, Gonzales, Quezada, Steele; Representatives
Andrade, Salman, Teller

AN ACT

AMENDING TITLE 31, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 6; RELATING
TO CRIMINAL CONVICTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 31, Arizona Revised Statutes, is amended by adding
3 chapter 6, to read:

4 CHAPTER 6

5 ERRONEOUS CONVICTION AND IMPRISONMENT COMPENSATION

6 ARTICLE 1. GENERAL PROVISIONS

7 31-621. Erroneous conviction; damages; certificate of
8 innocence; destruction of records; appeal rights

9 A. NOTWITHSTANDING ANY OTHER LAW, A CLAIMANT MAY BRING AN ACTION IN
10 SUPERIOR COURT SEEKING DAMAGES FROM THIS STATE. THE CLAIMANT SHALL
11 ESTABLISH ALL OF THE FOLLOWING BY A PREPONDERANCE OF EVIDENCE:

12 1. THE CLAIMANT WAS CONVICTED OF A FELONY OFFENSE AND SUBSEQUENTLY
13 IMPRISONED.

14 2. THE CLAIMANT'S JUDGMENT OF CONVICTION WAS REVERSED OR VACATED
15 AND EITHER THE CHARGES WERE DISMISSED OR ON RETRIAL THE CLAIMANT WAS FOUND
16 NOT GUILTY.

17 3. THE CLAIMANT DID NOT COMMIT THE CRIME FOR WHICH THE CLAIMANT WAS
18 CONVICTED AND WAS NOT AN ACCESSORY OR ACCOMPLICE TO THE ACTS THAT WERE THE
19 BASIS OF THE CONVICTION AND THAT RESULTED IN A REVERSAL OR VACATION OF THE
20 JUDGMENT OF CONVICTION, DISMISSAL OF THE CHARGES OR FINDING OF NOT GUILTY
21 ON RETRIAL.

22 4. THE CLAIMANT DID NOT COMMIT OR SUBORN PERJURY, FABRICATE
23 EVIDENCE OR BY THE CLAIMANT'S OWN CONDUCT CAUSE OR BRING ABOUT THE
24 CONVICTION. A CONFESSION OR AN ADMISSION THAT IS LATER FOUND TO BE FALSE
25 OR A GUILTY PLEA DOES NOT CONSTITUTE COMMITTING OR SUBORNING PERJURY,
26 FABRICATING EVIDENCE OR CAUSING OR BRINGING ABOUT THE CONVICTION PURSUANT
27 TO THIS PARAGRAPH.

28 B. IN EXERCISING THE COURT'S DISCRETION REGARDING THE WEIGHT AND
29 ADMISSIBILITY OF EVIDENCE SUBMITTED PURSUANT TO THIS SECTION, THE COURT,
30 IN THE INTEREST OF JUSTICE, MAY GIVE DUE CONSIDERATION TO DIFFICULTIES OF
31 PROOF CAUSED BY THE PASSAGE OF TIME, THE DESTRUCTION OF EVIDENCE OR THE
32 DEATH OR UNAVAILABILITY OF WITNESSES OR OTHER FACTORS NOT CAUSED BY SUCH
33 PERSONS OR THOSE ACTING ON THEIR BEHALF.

34 C. THE CLAIMANT SHALL BRING THE CLAIM, ACCOMPANIED BY A STATEMENT
35 OF THE FACTS CONCERNING THE CLAIM FOR DAMAGES, WITHIN TWO YEARS AFTER
36 EITHER THE:

37 1. CRIMINAL CHARGES AGAINST THE CLAIMANT ARE DISMISSED OR THE
38 CLAIMANT IS FOUND NOT GUILTY ON RETRIAL.

39 2. CLAIMANT IS PARDONED.

40 D. A CLAIMANT WHO IS CONVICTED, IMPRISONED AND RELEASED FROM
41 CUSTODY BEFORE JULY 1, 2020 MUST COMMENCE AN ACTION UNDER THIS SECTION NOT
42 LATER THAN JULY 1, 2022.

1 E. ALL PLEADINGS SHALL BE CAPTIONED "IN THE MATTER OF THE WRONGFUL
2 CONVICTION OF_____". THE CLAIMANT MUST SERVE THE ATTORNEY GENERAL
3 WITH A COPY OF THE CLAIM THAT IS FILED PURSUANT TO THIS SECTION. THE
4 COURT SHALL TRY THE CLAIM, AND A JURY TRIAL MAY NOT BE REQUESTED.

5 F. IF THE COURT ENTERS A JUDGEMENT, THE COURT SHALL AWARD DAMAGES
6 IN THE FOLLOWING AMOUNTS:

7 1. \$65,000 FOR EACH YEAR OF IMPRISONMENT, EXCEPT THAT A CLAIMANT
8 MAY NOT RECEIVE COMPENSATION FOR ANY PERIOD OF INCARCERATION DURING WHICH
9 THE CLAIMANT WAS CONCURRENTLY SERVING A SENTENCE FOR A CONVICTION OF
10 ANOTHER CRIME FOR WHICH THE CLAIMANT WAS LAWFULLY INCARCERATED.

11 2. NOT LESS THAN \$25,000 FOR EACH ADDITIONAL YEAR THE CLAIMANT
12 SERVED ON PAROLE OR COMMUNITY SUPERVISION OR WAS REQUIRED TO REGISTER AS A
13 SEX OFFENDER PURSUANT TO SECTION 13-3821, WHICHEVER IS GREATER.

14 G. THE COURT SHALL ORDER THAT THE AWARD BE PAID AS A COMBINATION OF
15 AN INITIAL PAYMENT NOT TO EXCEED \$100,000 OR TWENTY-FIVE PERCENT OF THE
16 AWARD, WHICHEVER IS GREATER, AND THE REMAINDER AS AN ANNUITY NOT TO EXCEED
17 \$80,000 PER YEAR. THE CLAIMANT SHALL DESIGNATE A BENEFICIARY OR
18 BENEFICIARIES FOR THE ANNUITY BY FILING A DESIGNATION WITH THE COURT.

19 H. NOTWITHSTANDING SUBSECTION G OF THIS SECTION, THE COURT MAY
20 ORDER THAT THE AWARD BE PAID IN ONE LUMP SUM IF THE COURT FINDS THAT IT IS
21 IN THE BEST INTERESTS OF THE CLAIMANT.

22 I. IN ADDITION TO THE DAMAGES AWARDED PURSUANT TO SUBSECTION F OF
23 THIS SECTION, THE CLAIMANT:

24 1. IS ENTITLED TO RECEIVE REASONABLE ATTORNEY FEES AND COSTS
25 INCURRED IN THE ACTION OF NOT MORE THAN \$25,000, UNLESS THE COURT
26 AUTHORIZES A GREATER REASONABLE TOTAL ON A FINDING OF GOOD CAUSE SHOWN.

27 2. MAY BE AWARDED OTHER NONMONETARY RELIEF AS SOUGHT IN THE
28 COMPLAINT, INCLUDING COUNSELING, HOUSING ASSISTANCE AND PERSONAL FINANCIAL
29 LITERACY ASSISTANCE, AS APPROPRIATE.

30 3. IS ENTITLED TO RECEIVE TUITION ASSISTANCE PURSUANT TO SECTION
31 31-622.

32 4. IS ENTITLED TO PARTICIPATE IN THIS STATE'S EMPLOYEE HEALTH
33 INSURANCE BENEFITS PROGRAM, AND THIS STATE SHALL PAY ONE HUNDRED PERCENT
34 OF THE COSTS.

35 J. IF, AT THE TIME THE COURT ENTERS A JUDGMENT PURSUANT TO
36 SUBSECTION F OF THIS SECTION, THE CLAIMANT HAS WON A MONETARY AWARD
37 AGAINST THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE IN A CIVIL
38 ACTION RELATED TO THE SAME SUBJECT, OR HAS ENTERED INTO A SETTLEMENT
39 AGREEMENT WITH THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE
40 RELATED TO THE SAME SUBJECT, THE AMOUNT OF THE AWARD IN THE ACTION OR THE
41 AMOUNT RECEIVED IN THE SETTLEMENT AGREEMENT, LESS ANY SUMS PAID TO AN
42 ATTORNEY OR FOR COSTS IN LITIGATING THE OTHER CIVIL ACTION OR OBTAINING
43 THE SETTLEMENT AGREEMENT, SHALL BE DEDUCTED FROM THE SUM OF MONIES THAT
44 THE CLAIMANT IS ENTITLED TO RECEIVE UNDER THIS SECTION. THE COURT SHALL

1 INCLUDE IN THE JUDGMENT AN AWARD TO THIS STATE OF ANY AMOUNT DEDUCTED
2 PURSUANT TO THIS SUBSECTION.

3 K. IF SUBSECTION J OF THIS SECTION DOES NOT APPLY AND IF, AFTER THE
4 TIME THE COURT ENTERS A JUDGMENT PURSUANT TO SUBSECTION F OF THIS SECTION,
5 THE CLAIMANT WINS A MONETARY AWARD AGAINST THIS STATE OR ANY POLITICAL
6 SUBDIVISION OF THIS STATE IN A CIVIL ACTION RELATED TO THE SAME SUBJECT,
7 OR ENTERS INTO A SETTLEMENT AGREEMENT WITH THIS STATE OR ANY POLITICAL
8 SUBDIVISION OF THIS STATE RELATED TO THE SAME SUBJECT, THE CLAIMANT SHALL
9 REIMBURSE THE STATE FOR THE SUM OF MONIES PAID UNDER THE JUDGMENT, LESS
10 ANY SUMS PAID TO AN ATTORNEY OR FOR COSTS IN LITIGATING THE OTHER CIVIL
11 ACTION OR OBTAINING THE SETTLEMENT AGREEMENT. THE AMOUNT OF REIMBURSEMENT
12 MAY NOT EXCEED THE AMOUNT OF THE MONETARY AWARD THE CLAIMANT WINS FOR
13 DAMAGES IN THE OTHER CIVIL ACTION OR THE AMOUNT RECEIVED IN THE SETTLEMENT
14 AGREEMENT.

15 L. IF THE COURT FINDS THAT THE CLAIMANT IS ENTITLED TO A JUDGMENT,
16 THE COURT SHALL ENTER A CERTIFICATE OF INNOCENCE FINDING THAT THE CLAIMANT
17 WAS INNOCENT OF ALL CRIMES FOR WHICH THE CLAIMANT WAS MISTAKENLY
18 CONVICTED. THE CLERK OF THE COURT SHALL SEND A CERTIFIED COPY OF THE
19 CERTIFICATE OF INNOCENCE AND THE JUDGMENT TO THE ATTORNEY GENERAL FOR
20 PAYMENT.

21 M. ON ENTRY OF A CERTIFICATE OF INNOCENCE, THE COURT SHALL ORDER
22 THE ASSOCIATED CONVICTIONS AND ARREST RECORDS EXPUNGED AND PURGED FROM ALL
23 APPLICABLE STATE AND FEDERAL SYSTEMS. THE COURT SHALL ENTER THE
24 EXPUNGEMENT ORDER REGARDLESS OF WHETHER THE CLAIMANT HAS A HISTORICAL
25 PRIOR FELONY CONVICTION.

26 N. THE ORDER OF EXPUNGEMENT MUST STATE ALL OF THE FOLLOWING:

- 27 1. THE CLAIMANT'S CURRENT FULL NAME.
- 28 2. THE CLAIMANT'S FULL NAME AT THE TIME OF ARREST AND CONVICTION,
29 IF DIFFERENT THAN THE CLAIMANT'S CURRENT NAME.
- 30 3. THE CLAIMANT'S SEX, RACE AND DATE OF BIRTH.
- 31 4. THE OFFENSE FOR WHICH THE CLAIMANT WAS ARRESTED AND CONVICTED.
- 32 5. THE DATE OF THE CLAIMANT'S ARREST AND DATE OF THE CLAIMANT'S
33 CONVICTION.

34 6. THE IDENTITY OF THE ARRESTING LAW ENFORCEMENT AGENCY AND
35 IDENTITY OF THE CONVICTING COURT.

36 O. THE ORDER OF EXPUNGEMENT MUST ALSO DIRECT THE DEPARTMENT OF
37 PUBLIC SAFETY TO PURGE THE CONVICTION AND ARREST INFORMATION FROM THE
38 ARIZONA CRIMINAL JUSTICE INFORMATION SYSTEM AND ALL APPLICABLE STATE AND
39 FEDERAL DATABASES. THE CLERK OF THE COURT SHALL SEND A CERTIFIED COPY OF
40 THE ORDER TO THE DEPARTMENT OF PUBLIC SAFETY, WHICH SHALL CARRY OUT THE
41 ORDER AND NOTIFY THE FEDERAL BUREAU OF INVESTIGATION, THE STATE DEPARTMENT
42 OF CORRECTIONS AND ANY OTHER CRIMINAL JUSTICE AGENCY THAT MAY HAVE A
43 RECORD OF THE CONVICTION AND ARREST. THE DEPARTMENT OF PUBLIC SAFETY
44 SHALL PROVIDE CONFIRMATION OF THE ACTION TO THE COURT.

P. IF THE COURT ENTERS A CERTIFICATE OF INNOCENCE AND AN ORDER OF EXPUNGEMENT, THE CLAIMANT SHALL BE TREATED AS NOT HAVING BEEN ARRESTED OR CONVICTED OF THE CRIME.

Q. ON ENTRY OF A CERTIFICATE OF INNOCENCE, THE COURT SHALL ORDER THE EXPUNGEMENT AND DESTRUCTION OF THE ASSOCIATED BIOLOGICAL SAMPLES AUTHORIZED BY AND GIVEN TO THE DEPARTMENT OF PUBLIC SAFETY PURSUANT TO SECTION 13-610. THE ORDER SHALL DIRECT THE DEPARTMENT OF PUBLIC SAFETY TO EXPUNGE AND DESTROY THE SAMPLES AND PROFILE RECORD. THE CLERK OF THE COURT SHALL SEND A CERTIFIED COPY OF THE ORDER TO THE DEPARTMENT OF PUBLIC SAFETY, WHICH SHALL CARRY OUT THE ORDER AND PROVIDE CONFIRMATION OF THE ACTION TO THE COURT. THIS SUBSECTION DOES NOT REQUIRE THE DEPARTMENT OF PUBLIC SAFETY TO EXPUNGE AND DESTROY SAMPLES OR A PROFILE RECORD ASSOCIATED WITH THE CLAIMANT THAT WAS RELATED TO ANY OFFENSE OTHER THAN THE OFFENSE FOR WHICH THE COURT HAS ENTERED A CERTIFICATE OF INNOCENCE.

R. THE DECISION TO GRANT OR DENY A CERTIFICATE OF INNOCENCE IS NOT RES JUDICATA ON ANY OTHER PROCEEDINGS.

S. THIS SECTION DOES NOT PRECLUDE THE STATE DEPARTMENT OF CORRECTIONS FROM PROVIDING REENTRY SERVICES TO A CLAIMANT THAT ARE PROVIDED TO OTHER PERSONS, INCLUDING FINANCIAL ASSISTANCE, HOUSING ASSISTANCE, MENTORING AND COUNSELING. THE DEPARTMENT SHALL PROVIDE THESE SERVICES WHILE AN ACTION UNDER THIS SECTION IS PENDING AND AFTER ANY JUDGMENT IS ENTERED, AS APPROPRIATE, FOR THE CLAIMANT.

T. THE DECISION OF THE SUPERIOR COURT MAY BE APPEALED DIRECTLY TO THE SUPREME COURT.

31-622. Erroneous conviction tuition assistance program; additional assistance; eligibility; definition

A. AN INDIVIDUAL WHO IS AWARDED TUITION ASSISTANCE PURSUANT TO SECTION 36-621, SUBSECTION I, PARAGRAPH 3 SHALL RECEIVE A WAIVER OF TUITION AND REQUIRED FEES FOR ATTENDANCE AT A POSTSECONDARY EDUCATIONAL INSTITUTION FOR UP TO ONE HUNDRED THIRTY CREDIT HOURS. THE INDIVIDUAL MAY ATTEND A POSTSECONDARY EDUCATIONAL INSTITUTION EITHER FULL OR PART TIME.

B. SUBJECT TO LEGISLATIVE APPROPRIATION, THE ARIZONA BOARD OF REGENTS MAY REIMBURSE EACH INDIVIDUAL WHO IS AWARDED TUITION ASSISTANCE AND WHO IS ENROLLED IN A POSTSECONDARY EDUCATIONAL INSTITUTION FOR ADDITIONAL FEES, INCLUDING FEES FOR ROOM AND BOARD, TECHNICAL EQUIPMENT AND COURSE BOOKS.

C. A POSTSECONDARY EDUCATIONAL INSTITUTION MAY NOT DELAY ENROLLMENT OF AN INDIVIDUAL WHO IS AWARDED TUITION ASSISTANCE PURSUANT TO SECTION 31-621, SUBSECTION I, PARAGRAPH 3 BECAUSE AN APPROPRIATION IS NOT AVAILABLE FOR ANY ADDITIONAL FEES PROVIDED TO THE INDIVIDUAL PURSUANT TO SUBSECTION B OF THIS SECTION.

D. TO REMAIN ELIGIBLE FOR THE TUITION AND FEE WAIVERS UNDER THIS SECTION, AN INDIVIDUAL MUST REMAIN IN GOOD STANDING AT THE POSTSECONDARY EDUCATIONAL INSTITUTION WHERE THE INDIVIDUAL IS ENROLLED.

1 E. AN INDIVIDUAL MUST PROVIDE A WRITTEN OR ELECTRONIC COPY OF THE
2 COURT ORDER AWARDING RELIEF IN THE FORM OF TUITION ASSISTANCE TO THE
3 POSTSECONDARY EDUCATIONAL INSTITUTION OR THE ARIZONA BOARD OF REGENTS.

4 F. THE ARIZONA BOARD OF REGENTS SHALL ADOPT RULES TO ADMINISTER
5 THIS SECTION.

6 G. FOR THE PURPOSES OF THIS SECTION, "POSTSECONDARY EDUCATIONAL
7 INSTITUTION" MEANS A UNIVERSITY UNDER THE JURISDICTION OF THE ARIZONA
8 BOARD OF REGENTS OR A COMMUNITY COLLEGE UNDER THE JURISDICTION OF A
9 COMMUNITY COLLEGE DISTRICT GOVERNING BOARD.