

REFERENCE TITLE: erroneous conviction; damages; tuition assistance

State of Arizona
Senate
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2021

SB 1694

Introduced by
Senators Mendez: Alston, Contreras, Gonzales, Navarrete, Quezada, Rios,
Steele; Representatives Hernandez M, Salman, Terán

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 31-701. Erroneous conviction; damages; certificate of
8 innocence; orders of expungement; destruction of
9 records; appeal rights

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

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

15 2. THE CLAIMANT'S JUDGMENT OF CONVICTION WAS REVERSED OR VACATED
16 AND EITHER:

17 (a) THE CHARGES WERE DISMISSED.

18 (b) ON RETRIAL, THE CLAIMANT WAS FOUND NOT GUILTY.

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

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

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

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

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

41 2. CLAIMANT IS PARDONED.

42 D. A CLAIMANT WHO IS CONVICTED, IMPRISONED AND RELEASED FROM
43 CUSTODY BEFORE JULY 1, 2021 MUST COMMENCE AN ACTION UNDER THIS SECTION NOT
44 LATER THAN JULY 1, 2023.

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 THE CLAIMANT MAY NOT REQUEST A JURY TRIAL.

5 F. IF THE COURT ENTERS A JUDGMENT, THE COURT SHALL AWARD DAMAGES IN
6 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. AT LEAST \$25,000 FOR EACH ADDITIONAL YEAR THE CLAIMANT SERVED ON
12 PAROLE OR COMMUNITY SUPERVISION OR WAS REQUIRED TO REGISTER AS A SEX
13 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 OF NOT MORE THAN \$100,000 OR TWENTY-FIVE PERCENT OF THE
16 AWARD, WHICHEVER IS GREATER, AND THE REMAINDER AS AN ANNUITY OF NOT MORE
17 THAN \$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 31-702.

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, MINUS 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 THIS STATE FOR THE SUM OF MONIES PAID UNDER THE JUDGMENT, MINUS
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 TO BE EXPUNGED AND PURGED
23 FROM ALL 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 SHALL DIRECT THE DEPARTMENT OF PUBLIC
37 SAFETY TO PURGE THE CONVICTION AND ARREST INFORMATION FROM THE ARIZONA
38 CRIMINAL JUSTICE INFORMATION SYSTEM AND ALL APPLICABLE STATE AND FEDERAL
39 DATABASES. THE CLERK OF THE COURT SHALL SEND A CERTIFIED COPY OF THE
40 ORDER TO THE DEPARTMENT OF PUBLIC SAFETY, WHICH SHALL CARRY OUT THE ORDER
41 AND NOTIFY THE FEDERAL BUREAU OF INVESTIGATION, THE STATE DEPARTMENT OF
42 CORRECTIONS AND ANY OTHER CRIMINAL JUSTICE AGENCY THAT MAY HAVE A RECORD
43 OF THE CONVICTION AND ARREST. THE DEPARTMENT OF PUBLIC SAFETY SHALL
44 PROVIDE CONFIRMATION OF THE ACTION TO THE COURT.

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

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

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

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

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

25 31-702. Erroneous conviction tuition assistance; additional
26 assistance; eligibility; rules; definition

27 A. AN INDIVIDUAL WHO IS AWARDED TUITION ASSISTANCE PURSUANT TO
28 SECTION 31-701, SUBSECTION I, PARAGRAPH 3 SHALL RECEIVE A WAIVER OF
29 TUITION AND REQUIRED FEES FOR ATTENDANCE AT A POSTSECONDARY EDUCATIONAL
30 INSTITUTION FOR UP TO ONE HUNDRED THIRTY CREDIT HOURS. THE INDIVIDUAL MAY
31 ATTEND A POSTSECONDARY EDUCATIONAL INSTITUTION ON EITHER A FULL-TIME OR
32 PART-TIME BASIS.

33 B. SUBJECT TO LEGISLATIVE APPROPRIATION, THE ARIZONA BOARD OF
34 REGENTS MAY REIMBURSE EACH INDIVIDUAL WHO IS AWARDED TUITION ASSISTANCE
35 PURSUANT TO SECTION 31-701, SUBSECTION I, PARAGRAPH 3 AND WHO IS ENROLLED
36 IN A POSTSECONDARY EDUCATIONAL INSTITUTION FOR ADDITIONAL FEES, INCLUDING
37 FEES FOR ROOM AND BOARD, TECHNICAL EQUIPMENT AND COURSE BOOKS.

38 C. A POSTSECONDARY EDUCATIONAL INSTITUTION MAY NOT DELAY ENROLLMENT
39 OF AN INDIVIDUAL WHO IS AWARDED TUITION ASSISTANCE PURSUANT TO SECTION
40 31-701, SUBSECTION I, PARAGRAPH 3 BECAUSE AN APPROPRIATION IS NOT
41 AVAILABLE FOR ANY ADDITIONAL FEES PROVIDED TO THE INDIVIDUAL PURSUANT TO
42 SUBSECTION B OF THIS SECTION.

43 D. TO REMAIN ELIGIBLE FOR THE TUITION AND FEE WAIVERS UNDER THIS
44 SECTION, AN INDIVIDUAL MUST REMAIN IN GOOD STANDING AT THE POSTSECONDARY
45 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.