

REFERENCE TITLE: justification; malicious prosecution; fees; costs

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1030

Introduced by
Senator Rogers

AN ACT

AMENDING TITLE 13, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-422; RELATING TO JUSTIFICATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 13, chapter 4, Arizona Revised Statutes, is
3 amended by adding section 13-422, to read:

4 13-422. Justification in homicide prosecution; malicious
5 prosecution; fees and costs; just compensation;
6 reporting; definition

7 A. IF A DEFENDANT IS FOUND NOT GUILTY OF HOMICIDE BECAUSE THE STATE
8 FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT'S ACTIONS
9 WERE NOT JUSTIFIED PURSUANT TO THIS CHAPTER, THE DEFENDANT SHALL BE
10 AWARDED REASONABLE ATTORNEY FEES AND COSTS.

11 B. IF THE TRIER OF FACT DETERMINES THAT THE DEFENDANT'S ACTIONS
12 WERE JUSTIFIED, THE JUDGE SHALL DETERMINE THE AMOUNT OF THE AWARD.
13 NOTWITHSTANDING A FINDING THAT A DEFENDANT'S ACTIONS WERE JUSTIFIED, IF
14 THE TRIER OF FACT ALSO DETERMINES THAT THE DEFENDANT ENGAGED IN CRIMINAL
15 CONDUCT SUBSTANTIALLY RELATED TO THE EVENTS GIVING RISE TO THE CHARGES
16 FILED AGAINST THE DEFENDANT, THE JUDGE MAY DENY OR REDUCE THE AMOUNT OF
17 THE AWARD. IN DETERMINING THE AMOUNT OF THE AWARD, THE JUDGE SHALL ALSO
18 CONSIDER THE SERIOUSNESS OF THE INITIAL CRIMINAL CONDUCT.

19 C. THE STATE SHALL REIMBURSE THE DEFENDANT FOR ALL REASONABLE FEES
20 AND COSTS, INCLUDING LOST WAGES, ATTORNEY FEES AND OTHER EXPENSES INVOLVED
21 IN THE DEFENDANT'S DEFENSE. THE REIMBURSEMENT IS NOT AN INDEPENDENT CAUSE
22 OF ACTION.

23 D. IF THE TRIER OF FACT DETERMINES THAT THE DEFENDANT'S ACTIONS
24 WERE JUSTIFIED AND THE DEFENDANT ESTABLISHES THAT INJURY OCCURRED DUE TO A
25 MALICIOUS PROSECUTION, THE DEFENDANT SHALL BE AWARDED FAIR AND JUST
26 COMPENSATION.

27 E. TO SUPPORT A CLAIM OF MALICIOUS PROSECUTION, THE DEFENDANT SHALL
28 ESTABLISH ALL OF THE FOLLOWING:

- 29 1. A PROSECUTION FOR HOMICIDE WAS COMMENCED AGAINST THE DEFENDANT.
- 30 2. THE PROSECUTION WAS MALICIOUS.
- 31 3. THE PROSECUTION WAS INSTITUTED OR INSTIGATED BY THE PROSECUTOR.
- 32 4. THE PROSECUTION WAS WITHOUT PROBABLE CAUSE.
- 33 5. THE PROSECUTION HAS BEEN LEGALLY AND FINALLY TERMINATED IN FAVOR
34 OF THE DEFENDANT.
- 35 6. AS A RESULT OF THE PROSECUTION THE DEFENDANT SUSTAINED INJURY.

36 F. NOTWITHSTANDING ANY OTHER LAW, A PROSECUTOR MAY BE HELD
37 PERSONALLY LIABLE TO A DEFENDANT WHO ESTABLISHES THAT A MALICIOUS
38 PROSECUTION OCCURRED.

39 G. WHEN A MALICIOUS PROSECUTION IS ESTABLISHED, A JUDGE WHO
40 PRESIDED OVER ANY STAGE OF THE PROSECUTION SHALL IMMEDIATELY REPORT THE
41 FINDING TO THE STATE BAR FOR A DISCIPLINARY INVESTIGATION OF BOTH THE
42 PROSECUTOR AND THE COUNTY ATTORNEY WHO EMPLOYS THE PROSECUTOR.

- 1 H. FOR THE PURPOSES OF THIS SECTION, "MALICIOUS PROSECUTION" MEANS
2 A PROSECUTION TO WHICH ONE OF THE FOLLOWING APPLIES:
3 1. THE PRINCIPAL MOTIVE OF THE PROSECUTION WAS OTHER THAN A DESIRE
4 TO BRING AN ALLEGED OFFENDER TO JUSTICE.
5 2. THE PROSECUTION WAS DONE WITH ILL WILL OR HATRED.
6 3. THE PROSECUTION WAS WILFULLY DONE IN A WANTON OR OPPRESSIVE
7 MANNER AND IN CONSCIOUS DISREGARD OF THE ALLEGED OFFENDER'S RIGHTS.