

REFERENCE TITLE: erroneous convictions; civil action

State of Arizona
House of Representatives
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HB 2281

Introduced by
Representatives Sinema, Ableser, Campbell CL: Campbell CH, Gallardo,
Lopes, Lujan, Prezelski, Tom

AN ACT

AMENDING TITLE 31, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 5; RELATING TO
COMPENSATION FOR ERRONEOUS 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 5, to read:

4 CHAPTER 5

5 COMPENSATION FOR ERRONEOUS CONVICTIONS

6 ARTICLE 1. GENERAL PROVISIONS

7 31-551. Erroneous convictions; damages; definition

8 A. A PERSON WHO HAS BEEN ERRONEOUSLY CONVICTED MAY APPLY FOR
9 COMPENSATION FROM THIS STATE PURSUANT TO THIS SECTION. FOR THE PURPOSES OF
10 THIS SECTION, AN ERRONEOUS CONVICTION MAY OCCUR WHETHER OR NOT THIS STATE,
11 ANY POLITICAL SUBDIVISION OF THIS STATE OR ANY EMPLOYEE OF THIS STATE OR A
12 POLITICAL SUBDIVISION OF THIS STATE ENGAGED IN CONDUCT THAT PURPOSEFULLY,
13 RECKLESSLY OR NEGLIGENTLY LED TO THE ERRONEOUS CONVICTION.

14 B. THE PERSON WHO CLAIMS TO HAVE BEEN ERRONEOUSLY CONVICTED AND WHO IS
15 SEEKING COMPENSATION FROM THIS STATE HAS THE BURDEN OF PROVING THE ERRONEOUS
16 CONVICTION. ON MOTION FROM THE PERSON OR ON THE COURT'S OWN MOTION, THE
17 COURT HAVING JURISDICTION SHALL DETERMINE BY CLEAR AND CONVINCING EVIDENCE
18 WHETHER THE PERSON COMMITTED THE OFFENSE FOR WHICH THE PERSON WAS CONVICTED
19 AND SENTENCED, INCLUDING ANY LESSER INCLUDED OFFENSE. IF THE COURT FINDS
20 THAT THE PERSON DID NOT COMMIT THE OFFENSE FOR WHICH THE PERSON WAS
21 CONVICTED, THE COURT SHALL ENTER A FINDING DECLARING THE PERSON TO BE
22 ERRONEOUSLY CONVICTED AND SHALL ENTER A JUDGMENT FOR DAMAGES AGAINST THIS
23 STATE. FOR THE PURPOSES OF THIS SUBSECTION, A COURT HAS JURISDICTION IF:

24 1. THE COURT IS THE COURT THAT ISSUES THE ORDER NULLIFYING THE
25 CONVICTION AND SENTENCE OF THE ERRONEOUSLY CONVICTED PERSON.

26 2. THE PERSON WAS RELEASED FROM CUSTODY OTHER THAN BY JUDICIAL ORDER
27 AND THE COURT IS THE SUPERIOR COURT IN THE COUNTY IN WHICH THE PERSON WAS
28 CONVICTED.

29 C. IF THE COURT AWARDS DAMAGES PURSUANT TO THIS SECTION, THE COURT MAY
30 AWARD THE FOLLOWING DAMAGES:

31 1. ANY FINES, FEES AND COSTS THAT WERE IMPOSED ON AND PAID BY OR ON
32 BEHALF OF THE ERRONEOUSLY CONVICTED PERSON IN CONNECTION WITH THE ERRONEOUSLY
33 IMPOSED CONVICTION AND SENTENCE.

34 2. ANY ATTORNEY FEES THAT WERE INCURRED IN THE DEFENSE OF THE
35 ERRONEOUSLY CONVICTED PERSON, INCLUDING ALL LEGAL PROCEEDINGS LEADING TO AND
36 REASONABLY NECESSITATED BY THE ERRONEOUSLY IMPOSED CONVICTION AND SENTENCE.

37 3. ANY SPECIAL DAMAGES THAT WERE CAUSED BY THE PERSON'S ERRONEOUS
38 CONVICTION, INCLUDING DAMAGES FOR LOST WAGES OR OTHER EARNED INCOME, LOST
39 REAL AND PERSONAL PROPERTY AND FORFEITURES, AND COSTS RELATED TO COUNSELING,
40 PSYCHOTHERAPY, VOCATIONAL REHABILITATION, MEDICAL EXPENSES AND OTHER SIMILAR
41 EXPENSES.

42 4. ANY GENERAL DAMAGES, TAKING INTO ACCOUNT THE LENGTH AND CONDITIONS
43 OF INCARCERATION, LOSS OF CONSORTIUM WITH OR DIVORCE FROM A SPOUSE, LOSS OF
44 ANY RELATIONSHIP WITH CHILDREN AND ANY OTHER LOSS AND SUFFERING CAUSED BY THE
45 ERRONEOUS CONVICTION.

1 5. ANY PUNITIVE DAMAGES IF IT IS PROVEN BY CLEAR AND CONVINCING
2 EVIDENCE THAT THIS STATE, A POLITICAL SUBDIVISION OF THIS STATE OR ANY
3 EMPLOYEE OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE, IN SECURING
4 THE ERRONEOUS CONVICTION, ACTED WITH THE REQUISITE CULPABILITY FOR AN AWARD
5 OF PUNITIVE DAMAGES.

6 D. THE COURT SHALL NOT OFFSET AN AWARD OF DAMAGES BY ANY EXPENSES
7 INCURRED BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE IN
8 CONNECTION WITH THE ARREST, PROSECUTION AND IMPRISONMENT OF THE ERRONEOUSLY
9 CONVICTED PERSON, INCLUDING EXPENSES FOR FOOD, CLOTHING, SHELTER AND MEDICAL
10 CARE WHILE IN CUSTODY.

11 E. THE COURT MAY ORDER STRUCTURED PAYMENTS OF THE AMOUNT AWARDED
12 PURSUANT TO SUBSECTION C.

13 F. ANY DAMAGES THAT ARE AWARDED PURSUANT TO THIS SECTION SHALL BE PAID
14 FROM THE STATE GENERAL FUND. THE STATE MAY MAINTAIN AN ACTION AGAINST THE
15 JURISDICTION THAT PROSECUTED THE ERRONEOUSLY CONVICTED PERSON TO RECOVER ANY
16 DAMAGES THAT ARE AWARDED PURSUANT TO THIS SECTION.

17 G. A PERSON WHO IS AWARDED DAMAGES PURSUANT TO THIS SECTION IS BARRED
18 FROM PURSUING ANY FURTHER STATE LAW CLAIMS RESULTING FROM OR RELATED TO THE
19 ERRONEOUS CONVICTION.

20 H. ANY FINDINGS OF FACT THAT ARE MADE BY A COURT PURSUANT TO THIS
21 SECTION ARE SUBJECT TO APPELLATE REVIEW.

22 I. FOR THE PURPOSES OF THIS SECTION, "ERRONEOUSLY CONVICTED PERSON"
23 MEANS A PERSON TO WHOM ALL OF THE FOLLOWING APPLY:

24 1. THE PERSON WAS CONVICTED OF A MISDEMEANOR OR FELONY OFFENSE.

25 2. THE PERSON WAS SENTENCED TO A TERM OF INCARCERATION.

26 3. THE PERSON'S CONVICTION WAS VACATED, DISMISSED, REVERSED OR
27 OTHERWISE NULLIFIED AND THE PERSON IS NOT SUBJECT TO FURTHER CRIMINAL
28 PROCEEDINGS BASED ON THE EVENTS ALLEGED IN THE UNDERLYING NULLIFIED CHARGES.

29 4. THE PERSON IS FOUND BY THE COURT TO HAVE NOT COMMITTED THE CHARGED
30 OFFENSE OR ANY LESSER INCLUDED OFFENSE.

31 31-552. Commission of inquiry; report

32 A. IF A COURT MAKES A FINDING OF ERRONEOUS CONVICTION, THE COURT SHALL
33 FORWARD A COPY OF THE JUDGMENT TO THE SUPREME COURT. THE SUPREME COURT SHALL
34 APPOINT ONE OR MORE PERSONS TO SERVE AS AN AD HOC COMMISSION OF INQUIRY OR
35 SHALL REFER THE MATTER TO A STANDING COMMISSION OF INQUIRY TO INVESTIGATE THE
36 CAUSES OF THE ERRONEOUS CONVICTION. ALL LAW ENFORCEMENT AGENCIES AND COUNTY
37 ATTORNEYS SHALL COOPERATE FULLY WITH THE INVESTIGATION.

38 B. AFTER COMPLETION OF ITS INVESTIGATION, THE COMMISSION SHALL SUBMIT
39 A REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE SUPREME COURT. THE
40 REPORT IS A PUBLIC RECORD.

1 Sec. 2. Applicability

2 A person who was convicted before the effective date of this act and
3 who meets the eligibility requirements under section 31-551, Arizona Revised
4 Statutes, as added by this act, may file a civil action in the superior court
5 for relief. The action shall be filed within two years after the effective
6 date of this act.

7 Sec. 3. Purpose

8 The purpose of this act is to restore innocent persons who have been
9 erroneously convicted and punished, as nearly as is reasonably possible, to
10 the conditions and circumstances they enjoyed before being erroneously
11 convicted.