

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2321

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Title 12, chapter 6, Arizona Revised Statutes, is amended
3 by adding article 17, to read:

4 ARTICLE 17. DECLARATION OF INNOCENCE

5 12-771. Factual innocence; judicial determination; procedure;
6 definition

7 A. A PERSON, OR A PROSECUTING AGENCY ON BEHALF OF THE PERSON, MAY
8 PETITION THE SUPERIOR COURT FOR A JUDICIAL DETERMINATION OF THE PERSON'S
9 FACTUAL INNOCENCE IF AS A RESULT OF THE PERSON'S PERSONAL IDENTIFYING
10 INFORMATION BEING TAKEN, THE PERSON'S NAME WAS EITHER:

11 1. USED BY ANOTHER PERSON WHO WAS ARRESTED, CITED OR CHARGED WITH A
12 CRIMINAL OFFENSE.

13 2. ENTERED AS OF RECORD IN A JUDGMENT OF GUILT IN A CRIMINAL CASE.

14 B. THE PETITION SHALL BE FILED IN THE SUPERIOR COURT IN THE COUNTY IN
15 WHICH THE ARREST WAS MADE, THE CITATION WAS ISSUED OR THE CHARGE WAS FILED.

16 C. IF THE CHARGE WAS FILED IN A JUSTICE OF THE PEACE COURT OR
17 MUNICIPAL COURT THE JUSTICE OF THE PEACE OR PRESIDING OFFICER OF A MUNICIPAL
18 COURT SHALL TRANSMIT ALL PAPERS IN THE CASE, A COPY OF ALL PROCEEDINGS AS
19 SHOWN BY THE DOCKET AND ALL ORDERS ENTERED IN THE ACTION TO THE CLERK OF THE
20 SUPERIOR COURT OF THE COUNTY.

21 D. IF NO CHARGE WAS FILED THE PETITION SHALL BE SERVED ON THE
22 ARRESTING OR CITING LAW ENFORCEMENT AGENCY.

1 E. IF A CHARGE WAS FILED:

2 1. THE PETITION, IF FILED BY THE PERSON, SHALL BE SERVED ON THE
3 PROSECUTING AGENCY AND, IF APPLICABLE, A COPY OF THE PETITION SHALL BE
4 PROVIDED TO THE DEFENSE ATTORNEY.

5 2. THE PROSECUTING AGENCY, ON THE FILING OF THE PETITION, SHALL
6 PROVIDE NOTICE TO ALL VICTIMS PURSUANT TO SECTION 13-4440.

7 F. THE COURT MAY CONDUCT A HEARING TO DETERMINE THE PERSON'S FACTUAL
8 INNOCENCE.

9 G. IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE
10 PERSON'S NAME WAS USED AS SET FORTH IN SUBSECTION A OF THIS SECTION THE COURT
11 SHALL FIND THE PERSON FACTUALLY INNOCENT OF THE OFFENSE.

12 H. ON A FINDING OF FACTUAL INNOCENCE THE COURT SHALL NOTIFY THE
13 FOLLOWING, IF APPLICABLE:

- 14 1. THE PERSON.
- 15 2. THE PROSECUTING AGENCY.
- 16 3. THE LAW ENFORCEMENT AGENCY.
- 17 4. THE DEFENSE ATTORNEY.

18 I. THE COURT SHALL CONSIDER A PERSON OR PARTY'S REQUEST TO EXPEDITE
19 THE JUDICIAL DETERMINATION.

20 J. FOR THE PURPOSES OF THIS SECTION, "PERSONAL IDENTIFYING
21 INFORMATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-2001.

22 12-772. Factual improper party status; judicial determination;
23 procedure; definition

24 A. A PERSON, OR A PARTY TO THE ACTION ON BEHALF OF THE PERSON, MAY
25 PETITION THE SUPERIOR COURT FOR A JUDICIAL DETERMINATION OF THE PERSON'S
26 FACTUAL IMPROPER PARTY STATUS IF AS A RESULT OF THE PERSON'S PERSONAL
27 IDENTIFYING INFORMATION BEING TAKEN THE PERSON'S NAME WAS ENTERED AS OF
28 RECORD IN A CIVIL ACTION OR JUDGMENT.

29 B. THE PETITION SHALL BE FILED IN THE SUPERIOR COURT IN THE COUNTY IN
30 WHICH THE CIVIL ACTION WAS FILED.

1 C. IF THE CIVIL ACTION WAS FILED IN A JUSTICE OF THE PEACE COURT, THE
2 JUSTICE OF THE PEACE SHALL MAKE A CERTIFIED COPY OF ALL DOCKET ENTRIES AND
3 THE RECORD OF THE PROCEEDINGS IN THE ACTION AND TRANSMIT IT TOGETHER WITH A
4 CERTIFIED COPY OF THE BILL OF COSTS AND THE ORIGINAL PAPERS IN THE ACTION TO
5 THE CLERK OF THE SUPERIOR COURT.

6 D. THE PETITIONER SHALL SERVE THE PETITION ON ALL PARTIES.

7 E. THE COURT MAY CONDUCT A HEARING TO DETERMINE THE PERSON'S FACTUAL
8 IMPROPER PARTY STATUS.

9 F. IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE PERSON
10 IS NOT A PROPER PARTY TO THE CIVIL ACTION OR JUDGMENT AS A RESULT OF THE
11 PERSON'S PERSONAL IDENTIFYING INFORMATION BEING TAKEN THE COURT SHALL FIND
12 THE PERSON A FACTUAL IMPROPER PARTY IN THAT CIVIL ACTION OR JUDGMENT.

13 G. THE COURT SHALL NOTIFY THE PERSON AND ALL PARTIES OF THE COURT'S
14 FINDING.

15 H. THE COURT SHALL CONSIDER A PERSON OR PARTY'S REQUEST TO EXPEDITE
16 THE JUDICIAL DETERMINATION.

17 I. FOR THE PURPOSES OF THIS SECTION, "PERSONAL IDENTIFYING
18 INFORMATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-2001.

19 12-773. Factual innocence; factual improper party; other
20 remedies

21 A. A PROCEEDING PURSUANT TO THIS ARTICLE IS IN ADDITION TO ANY OTHER
22 PROCEDURE OR REMEDY AVAILABLE TO A VICTIM OF IDENTITY THEFT.

23 B. NO PERSON OR CREDITOR MAY REQUIRE A VICTIM OF IDENTITY THEFT TO
24 FILE A PETITION PURSUANT TO THIS ARTICLE.

25 Sec. 2. Title 13, chapter 40, Arizona Revised Statutes, is amended by
26 adding section 13-4440, to read:

27 13-4440. Notice of petition of factual innocence; right to be
28 heard; hearing; final decision

29 A. THE VICTIM HAS THE RIGHT TO BE PRESENT AND BE HEARD AT ANY
30 PROCEEDING IN WHICH A PERSON'S FACTUAL INNOCENCE IS BEING CONSIDERED PURSUANT
31 TO SECTION 12-771.

1 B. THE PROSECUTING AGENCY SHALL PROVIDE WRITTEN NOTICE OF THE
2 FOLLOWING TO THE VICTIM:

- 3 1. THE DATE, TIME AND LOCATION OF THE HEARING.
4 2. THE VICTIM'S RIGHT TO BE PRESENT AND BE HEARD AT THE HEARING.

5 C. IF THE COURT MAKES A DETERMINATION OF FACTUAL INNOCENCE PURSUANT TO
6 SECTION 12-771, THE PROSECUTING AGENCY SHALL PROVIDE THE VICTIM WITH A COPY
7 OF THE COURT ORDER WITHIN FIFTEEN DAYS AFTER THE ORDER IS ENTERED."

8 Amend title to conform

EDDIE FARNSWORTH

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