

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1500

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Title 13, chapter 38, Arizona Revised Statutes, is
3 amended by adding article 35, to read:

4 ARTICLE 35. ERRONEOUS CONVICTIONS

5 13-4296. Erroneous convictions; compensation

6 A. NOTWITHSTANDING ANY OTHER LAW, A CLAIMANT MAY BRING AN ACTION IN
7 SUPERIOR COURT SEEKING COMPENSATION FROM THIS STATE FOR A FELONY CONVICTION
8 FOR WHICH THE CLAIMANT WAS INCARCERATED IF ONE OF THE FOLLOWING APPLIES:

9 1. THE CLAIMANT WAS PARDONED BASED ON INNOCENCE.

10 2. THE CLAIMANT'S JUDGMENT OF CONVICTION WAS REVERSED OR VACATED AND
11 THE CHARGES WERE DISMISSED OR THE CLAIMANT WAS FOUND NOT GUILTY ON RETRIAL.

12 3. THE CLAIMANT'S JUDGMENT OF CONVICTION WAS REVERSED OR VACATED AND
13 THE CLAIMANT ENTERED A PLEA OF NO CONTEST, WHILE MAINTAINING A CLAIM OF
14 INNOCENCE, AFTER THE CONVICTION WAS OVERTURNED, REVERSED OR VACATED ON
15 DIRECT APPEAL OR POSTCONVICTION REVIEW WHEN THE CLAIMANT WOULD OTHERWISE
16 HAVE BEEN ENTITLED TO A NEW TRIAL.

17 B. ALL PLEADINGS SHALL BE ENTITLED "IN THE MATTER OF THE ERRONEOUS
18 CONVICTION OF ____". THE CLAIMANT SHALL SERVE THE ATTORNEY GENERAL WITH A
19 COPY OF THE CLAIM. THE COURT SHALL DECIDE THE CLAIM. THE ARIZONA RULES OF
20 CIVIL PROCEDURE APPLY. THE ACTION SHALL BE BROUGHT IN THE COUNTY OF
21 CONVICTION OR IN MARICOPA COUNTY.

22 C. THE CLAIMANT SHALL BRING THE CLAIM WITHIN TWO YEARS AFTER ONE OF
23 THE FOLLOWING OCCURS:

1 1. THE CLAIMANT'S CONVICTION IS OVERTURNED OR VACATED AND THE
2 CHARGES AGAINST THE CLAIMANT ARE DISMISSED, THE CLAIMANT IS FOUND NOT
3 GUILTY ON RETRIAL OR THE CLAIMANT ENTERS A PLEA OF NO CONTEST, WHICHEVER
4 OCCURS LATER.

5 2. THE CLAIMANT IS PARDONED BASED ON INNOCENCE.

6 3. THE EFFECTIVE DATE OF THIS SECTION IF THE CLAIMANT WAS CONVICTED,
7 INCARCERATED AND RELEASED FROM CUSTODY BEFORE THE EFFECTIVE DATE OF THIS
8 SECTION.

9 D. THE ATTORNEY GENERAL SHALL RESPOND WITHIN THIRTY DAYS TO THE
10 CLAIM. THE ATTORNEY GENERAL MAY REQUEST A SINGLE THIRTY-DAY EXTENSION TO
11 RESPOND ON A SHOWING OF GOOD CAUSE. THE PARTIES MAY STIPULATE TO AN
12 ADDITIONAL EXTENSION OF TIME.

13 E. THE ATTORNEY GENERAL HAS THE BURDEN OF PROVING BY CLEAR AND
14 CONVINCING EVIDENCE THAT THE CLAIMANT IS NOT ENTITLED TO COMPENSATION
15 BECAUSE THE CLAIMANT EITHER:

16 1. COMMITTED THE OFFENSE FOR WHICH THE CLAIMANT WAS CONVICTED.

17 2. COMMITTED PERJURY, FABRICATED EVIDENCE OR BY THE CLAIMANT'S OWN
18 CONDUCT CAUSED OR BROUGHT ABOUT THE CONVICTION. A CONFESSION OR ADMISSION
19 LATER FOUND TO BE FALSE OR A GUILTY PLEA DOES NOT CONSTITUTE COMMITTING
20 PERJURY, FABRICATING EVIDENCE OR CAUSING OR BRINGING ABOUT THE CONVICTION.

21 F. IF THE ATTORNEY GENERAL DOES NOT OBJECT IN THE RESPONSE, THE
22 COURT SHALL ENTER AN ORDER GRANTING THE ERRONEOUS CONVICTION CLAIM. IF THE
23 ATTORNEY GENERAL OBJECTS, THE COURT SHALL ORDER AND HOLD AN EVIDENTIARY
24 HEARING. A COURT ORDER THAT GRANTS OR DENIES THE CLAIM SHALL INCLUDE
25 FINDINGS OF FACT AND CONCLUSIONS OF LAW.

26 G. IF THE COURT ENTERS AN ORDER GRANTING THE CLAIM, THE COURT SHALL
27 AWARD COMPENSATION AS FOLLOWS:

28 1. FOR EACH YEAR THE CLAIMANT WAS INCARCERATED, TWO HUNDRED PERCENT
29 OF THE MEDIAN HOUSEHOLD INCOME IN THIS STATE AS IT EXISTED ON THE DATE THE
30 CLAIMANT WAS INCARCERATED AND AS DETERMINED BY THE UNITED STATES DEPARTMENT
31 OF HOUSING AND URBAN DEVELOPMENT AND ADJUSTED FOR INFLATION USING THE
32 CONSUMER PRICE INDEX FOR URBAN CONSUMERS. THE AMOUNT FOR ANY PARTIAL YEAR

1 SHALL BE PRORATED IN ORDER TO COMPENSATE THE CLAIMANT ONLY FOR THE PORTION
2 OF THE YEAR IN WHICH THE CLAIMANT WAS INCARCERATED.

3 2. THE CLAIMANT MAY REQUEST MORE THAN THE AMOUNT OF COMPENSATION
4 AWARDED PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION. IF THE CLAIMANT
5 REQUESTS ADDITIONAL COMPENSATION, THE COURT MUST HOLD AN EVIDENTIARY
6 HEARING. THE COURT SHALL CONSIDER THE PRO PER STATUS OF THE CLAIMANT IN
7 DETERMINING WHETHER ADDITIONAL COMPENSATION IS WARRANTED. THE CLAIMANT MAY
8 PRESENT THE FOLLOWING EVIDENCE:

9 (a) WHETHER THE CLAIMANT WAS REQUIRED TO REGISTER PURSUANT TO
10 SECTION 13-3821 AND FOR WHAT LENGTH OF TIME THE CLAIMANT COMPLIED WITH THE
11 REGISTRATION REQUIREMENTS.

12 (b) EXPENSES FOR REINTEGRATIVE SERVICES AND MENTAL AND PHYSICAL
13 HEALTH CARE COSTS THAT THE CLAIMANT INCURRED FOR THE TIME PERIOD BETWEEN
14 THE CLAIMANT'S RELEASE FROM CUSTODY AND THE ENTRY OF JUDGMENT.

15 (c) UNREIMBURSED COSTS, FINES, FEES OR SURCHARGES THAT WERE IMPOSED
16 ON THE CLAIMANT AS A RESULT OF THE ERRONEOUS CONVICTION AND THAT WERE PAID
17 BY OR ON BEHALF OF THE CLAIMANT.

18 (d) UNREIMBURSED RESTITUTION THAT WAS PAID BY OR ON BEHALF OF THE
19 CLAIMANT AS A RESULT OF THE ERRONEOUS CONVICTION.

20 (e) ANY OTHER DAMAGES THE CLAIMANT MAY HAVE SUFFERED ARISING FROM OR
21 RELATED TO THE CLAIMANT'S ARREST, PROSECUTION, CONVICTION AND
22 INCARCERATION.

23 3. REASONABLE ATTORNEY FEES AND COSTS OF NOT MORE THAN \$25,000
24 UNLESS THE COURT AUTHORIZES A GREATER REASONABLE TOTAL ON A FINDING OF GOOD
25 CAUSE SHOWN.

26 H. COMPENSATION AWARDED TO THE CLAIMANT PURSUANT TO THIS SECTION
27 DOES NOT CONSTITUTE GROSS INCOME FOR THE PURPOSES OF TITLE 42 OR 43.

28 I. THE COURT SHALL ORDER THAT THE AWARD BE PAID IN ONE LUMP SUM TO
29 THE CLAIMANT.

30 J. IN ADDITION TO THE COMPENSATION AWARDED PURSUANT TO SUBSECTION G
31 OF THIS SECTION, THE CLAIMANT IS ENTITLED TO THE FOLLOWING SERVICES FROM

1 LICENSED OR ACCREDITED STATE INSTITUTIONS, AGENCIES OR PROVIDERS WITHIN
2 THIS STATE:

3 1. REIMBURSEMENT FOR MENTAL HEALTH TREATMENT FOR UP TO FIFTY-TWO
4 CLINICAL HOURS AT A MAXIMUM OF \$250 PER HOUR WITHIN TWELVE MONTHS AFTER THE
5 COURT'S ORDER AWARDING COMPENSATION.

6 2. REIMBURSEMENT FOR UP TO ONE HUNDRED TWENTY CREDIT HOURS AT ANY
7 POSTSECONDARY EDUCATIONAL INSTITUTION, VOCATIONAL SCHOOL OR TRADE SCHOOL.

8 3. REIMBURSEMENT FOR UP TO FOUR FINANCIAL PLANNING OR LITERACY
9 CLASSES OR CONSULTATIONS WITHIN TWELVE MONTHS AFTER THE COURT'S ORDER
10 AWARDING COMPENSATION.

11 K. IF, AT THE TIME THE COURT ENTERS A JUDGMENT PURSUANT TO
12 SUBSECTION G OF THIS SECTION, THE CLAIMANT HAS WON A MONETARY JUDGMENT
13 AGAINST THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE IN A CIVIL
14 ACTION RELATED TO THE ERRONEOUS CONVICTION OR HAS ENTERED INTO A SETTLEMENT
15 AGREEMENT WITH THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE
16 RELATED TO THE ERRONEOUS CONVICTION, THE COURT SHALL DEDUCT THE AMOUNT
17 AWARDED IN THE ACTION OR THE AMOUNT RECEIVED IN THE SETTLEMENT AGREEMENT,
18 LESS ANY SUMS PAID TO AN ATTORNEY OR FOR COSTS IN LITIGATING THE OTHER
19 CIVIL ACTION OR OBTAINING THE SETTLEMENT AGREEMENT, FROM THE MONIES THAT
20 THE CLAIMANT IS ENTITLED TO RECEIVE UNDER THIS SECTION. THE COURT SHALL
21 INCLUDE IN THE JUDGMENT AN AWARD TO THIS STATE OF ANY AMOUNT THAT IS
22 DEDUCTED PURSUANT TO THIS SUBSECTION.

23 L. IF SUBSECTION K OF THIS SECTION DOES NOT APPLY, ANY FUTURE
24 DAMAGES THAT ARE AWARDED TO THE CLAIMANT RESULTING FROM AN ACTION BY THE
25 CLAIMANT AGAINST ANY UNIT OF GOVERNMENT IN THIS STATE BY REASON OF THE
26 ERRONEOUS CONVICTION SHALL BE OFFSET BY THE COMPENSATION AWARD RECEIVED
27 UNDER THIS SECTION.

28 M. THE COMPENSATION AWARD MAY NOT BE OFFSET BY ANY EXPENSES INCURRED
29 BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE, INCLUDING THE
30 FOLLOWING:

1 1. ANY EXPENSES THAT THIS STATE OR A POLITICAL SUBDIVISION OF THIS
2 STATE INCURRED TO SECURE THE CLAIMANT'S CUSTODY OR TO FEED, CLOTHE OR
3 PROVIDE MEDICAL SERVICES FOR THE CLAIMANT.

4 2. THE VALUE OF ANY SERVICES OR REDUCTION IN FEES FOR SERVICE, OR
5 THE VALUE THEREOF TO BE PROVIDED TO THE CLAIMANT THAT MAY BE AWARDED TO THE
6 CLAIMANT PURSUANT TO THIS SECTION.

7 N. IF THE COURT FINDS THAT THE CLAIMANT IS ENTITLED TO COMPENSATION,
8 THE COURT SHALL ISSUE A FINDING THAT THE CLAIMANT WAS ERRONEOUSLY CONVICTED
9 AND, AS A RESULT, SERVED A SPECIFIC AMOUNT OF TIME ERRONEOUSLY
10 INCARCERATED. THE CLERK OF THE COURT SHALL SEND A CERTIFIED COPY OF THE
11 ORDER TO THE DEPARTMENT OF ADMINISTRATION'S RISK MANAGEMENT REVOLVING FUND
12 FOR PAYMENT FROM THE RISK MANAGEMENT REVOLVING FUND ESTABLISHED PURSUANT TO
13 SECTION 41-622. THE DEPARTMENT OF ADMINISTRATION SHALL REMIT FROM THE RISK
14 MANAGEMENT REVOLVING FUND THE PAYMENT TO THE CLAIMANT WITHIN FORTY-FIVE
15 DAYS. ANY CLAIMS FOR REIMBURSEMENT UNDER SUBSECTION J OF THIS SECTION
16 SHALL BE SUBMITTED TO THE ADMINISTRATION FOR APPROVAL AND PAID FROM THE
17 RISK MANAGEMENT REVOLVING FUND WITHIN FOURTEEN DAYS AFTER RECEIPT.

18 O. NOTWITHSTANDING ANY OTHER LAW, ON ENTRY OF AN ERRONEOUS
19 CONVICTION RULING, THE COURT SHALL:

20 1. ORDER THE ASSOCIATED CONVICTIONS AND ARRESTS EXPUNGED FROM ALL
21 APPLICABLE STATE AND FEDERAL SYSTEMS AND THE RECORDS SEALED. THE COURT
22 SHALL ENTER THE EXPUNGEMENT ORDER REGARDLESS OF WHETHER THE CLAIMANT HAS A
23 HISTORICAL PRIOR FELONY CONVICTION. THE EXPUNGEMENT ORDER SHALL STATE ALL
24 OF THE FOLLOWING:

25 (a) THE CLAIMANT'S CURRENT FULL NAME.

26 (b) THE CLAIMANT'S FULL NAME AT THE TIME OF ARREST AND CONVICTION,
27 IF DIFFERENT THAN THE CLAIMANT'S CURRENT NAME.

28 (c) THE CLAIMANT'S SEX, RACE AND DATE OF BIRTH.

29 (d) THE OFFENSE FOR WHICH THE CLAIMANT WAS ARRESTED AND CONVICTED.

30 (e) THE DATES OF THE CLAIMANT'S ARREST AND CONVICTION.

31 (f) THE IDENTITY OF THE ARRESTING LAW ENFORCEMENT AGENCY AND
32 CONVICTING COURT.

1 (g) THAT THE ORDER EXPUNGES ANY RECORD OF THE CLAIMANT'S ARREST,
2 CHARGE, CONVICTION OR ADJUDICATION AND SENTENCE.

3 (h) THAT THE CLAIMANT'S CIVIL RIGHTS, INCLUDING THE RIGHT TO POSSESS
4 FIREARMS, ARE RESTORED, UNLESS THE CLAIMANT IS OTHERWISE NOT ELIGIBLE FOR
5 THE RESTORATION OF CIVIL RIGHTS ON GROUNDS OTHER THAN THE CONVICTION AT
6 ISSUE.

7 (i) THAT THE CLERK OF THE COURT SHALL NOTIFY THE DEPARTMENT OF
8 PUBLIC SAFETY, THE PROSECUTING AGENCY AND THE ARRESTING LAW ENFORCEMENT
9 AGENCY, IF APPLICABLE, OF THE EXPUNGEMENT ORDER.

10 (j) THAT THE CLERK OF THE COURT SHALL SEAL ALL RECORDS RELATING TO
11 THE EXPUNGED ARREST, CHARGE, CONVICTION OR ADJUDICATION AND SENTENCE AND
12 ALLOW THE RECORDS TO BE ACCESSED ONLY BY THE CLAIMANT OR THE CLAIMANT'S
13 ATTORNEY.

14 2. DIRECT THE DEPARTMENT OF PUBLIC SAFETY TO EXPUNGE AND DESTROY ANY
15 BIOLOGICAL SAMPLES, INCLUDING DNA AND FINGERPRINT SAMPLES, RECEIVED BY THE
16 DEPARTMENT PURSUANT TO SECTION 13-610. THE CLERK OF THE COURT SHALL SEND A
17 CERTIFIED COPY OF THE ORDER TO THE DEPARTMENT OF PUBLIC SAFETY, WHICH SHALL
18 IMPLEMENT THE ORDER AND PROVIDE CONFIRMATION OF THE ACTION TO THE
19 COURT. THIS PARAGRAPH DOES NOT REQUIRE THE DEPARTMENT OF PUBLIC SAFETY TO
20 EXPUNGE AND DESTROY SAMPLES OR A PROFILE RECORD THAT IS ASSOCIATED WITH THE
21 CLAIMANT AND THAT RELATES TO AN UNRELATED OFFENSE.

22 P. THE DEPARTMENT OF PUBLIC SAFETY SHALL SEAL AND SEPARATE THE
23 EXPUNGED RECORD FROM THE DEPARTMENT'S RECORDS AND SHALL INFORM ALL
24 APPROPRIATE STATE AND FEDERAL LAW ENFORCEMENT AGENCIES OF THE EXPUNGEMENT
25 AT NO COST TO THE CLAIMANT. THE STATE DEPARTMENT OF CORRECTIONS SHALL SEAL
26 AND SEPARATE THE EXPUNGED RECORD FROM THE DEPARTMENT'S RECORDS AND MAY NOT
27 MAKE INFORMATION RELATED TO THE EXPUNGED CONVICTION PUBLICLY AVAILABLE
28 THROUGH ANY DEPARTMENT DATABASE.

29 Q. THE ARRESTING AND PROSECUTING AGENCIES SHALL CLEARLY IDENTIFY IN
30 EACH AGENCY'S FILES AND ELECTRONIC RECORDS THAT THE CLAIMANT WAS
31 ERRONEOUSLY CONVICTED AND THAT THE ARREST, CHARGE, CONVICTION OR
32 ADJUDICATION AND SENTENCE ARE EXPUNGED AND MAY NOT MAKE ANY RECORDS OF THE

1 EXPUNGED ARREST, CHARGE, CONVICTION OR ADJUDICATION AND SENTENCE AVAILABLE
2 AS A PUBLIC RECORD TO ANY PERSON EXCEPT TO THE CLAIMANT OR THE CLAIMANT'S
3 ATTORNEY.

4 R. PURSUANT TO THE EXPUNGEMENT ORDER, THE CLAIMANT SHALL BE TREATED
5 AS NOT HAVING BEEN ARRESTED FOR OR CONVICTED OF THE EXPUNGED OFFENSE. THE
6 EXPUNGED ARREST, CHARGE, ADJUDICATION, CONVICTION OR SENTENCE MAY NOT BE
7 USED IN A SUBSEQUENT PROSECUTION BY A PROSECUTING AGENCY OR COURT FOR ANY
8 PURPOSE. THE CLAIMANT MAY STATE THAT THE CLAIMANT HAS NEVER BEEN ARRESTED
9 FOR, CHARGED WITH, ADJUDICATED DELINQUENT FOR, CONVICTED OF OR SENTENCED
10 FOR THE OFFENSE THAT IS THE SUBJECT OF THE EXPUNGEMENT.

11 S. THE CLAIMANT MAY REQUEST THAT THIS ACTION AND ERRONEOUS
12 CONVICTION RULING BE SEALED.

13 T. THE COURT'S DECISION TO GRANT OR DENY AN ERRONEOUS CONVICTION
14 CLAIM IS NOT RES JUDICATA ON ANY OTHER PROCEEDINGS.

15 U. IF THE COURT DENIES AN ERRONEOUS CONVICTION CLAIM, THE CLAIMANT
16 MAY FILE A DIRECT APPEAL PURSUANT TO SECTION 13-4033, SUBSECTION A,
17 PARAGRAPH 3.

18 V. IF THE COURT FINDS THAT THE CLAIMANT IS ENTITLED TO A JUDGMENT, A
19 VICTIM AS DEFINED IN SECTION 13-4401 IS ENTITLED TO REIMBURSEMENT FOR
20 MENTAL HEALTH TREATMENT FOR UP TO FIFTY-TWO CLINICAL HOURS WITHIN TWELVE
21 MONTHS AFTER THE COURT'S ORDER AWARDING COMPENSATION AT A MAXIMUM OF \$250
22 PER HOUR PURSUANT TO THE VICTIM COMPENSATION AND ASSISTANCE FUND
23 ESTABLISHED BY SECTION 41-2407. THE VICTIM DOES NOT NEED TO ESTABLISH ANY
24 OTHER ELIGIBILITY REQUIREMENTS TO RECEIVE REIMBURSEMENT FOR MENTAL HEALTH
25 SERVICES.

26 Sec. 2. Legislative findings

27 The legislature finds that:

28 1. Innocent persons who have been erroneously convicted of crimes
29 have been uniquely victimized, have distinct struggles reentering society,
30 have difficulty achieving legal redress due to a variety of substantive and
31 technical obstacles in the law and should have an available avenue of

1 redress over and above the existing tort remedies to seek compensation for
2 damages.

3 2. Erroneously convicted persons suffer particular and substantial
4 harm by being imprisoned for a crime they did not commit, including the
5 loss of liberty, livelihood and financial opportunity, so the legislature
6 intends that by enacting section 13-4296, Arizona Revised Statutes, as
7 added by this act, persons who were erroneously convicted and unjustly
8 robbed of their freedom should be able to receive monetary compensation and
9 non-monetary services.

10 3. Erroneous convictions cause victims of crime unique harm, so the
11 legislature intends to provide crime victims with mental health treatment
12 services in recognition of the trauma crime victims undergo when the legal
13 system fails them by erroneously convicting the wrong person."

14 Amend title to conform

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