

COMMITTEE ON APPROPRIATIONS
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 IF THE CLAIMANT
8 ESTABLISHES, BY A PREPONDERANCE OF THE EVIDENCE, THAT ALL OF THE FOLLOWING
9 APPLY:

10 1. THE CLAIMANT WAS CONVICTED OF A FELONY AND SUBSEQUENTLY
11 INCARCERATED.

12 2. THE CLAIMANT DID NOT COMMIT THE CRIME OR CRIMES FOR WHICH THE
13 CLAIMANT WAS CONVICTED.

14 3. THE CLAIMANT DID NOT COMMIT PERJURY, FABRICATE EVIDENCE OR BY THE
15 CLAIMANT'S OWN CONDUCT CAUSE OR BRING ABOUT THE CONVICTION. A CONFESSION
16 OR ADMISSION LATER FOUND TO BE FALSE OR A GUILTY PLEA DOES NOT CONSTITUTE
17 COMMITTING PERJURY, FABRICATING EVIDENCE OR CAUSING OR BRINGING ABOUT THE
18 CONVICTION.

19 4. ONE OF THE FOLLOWING APPLIES:

20 (a) THE CLAIMANT WAS PARDONED BASED ON INNOCENCE.

21 (b) THE CLAIMANT'S JUDGMENT OF CONVICTION WAS REVERSED OR VACATED
22 AND THE CHARGES WERE DISMISSED OR THE CLAIMANT WAS FOUND NOT GUILTY ON
23 RETRIAL.

1 (c) THE CLAIMANT'S JUDGMENT OF CONVICTION WAS REVERSED OR VACATED
2 AND THE CLAIMANT ENTERED AN ALFORD PLEA OR A PLEA OF NO CONTEST, WHILE
3 MAINTAINING A CLAIM OF INNOCENCE, AFTER THE CONVICTION WAS OVERTURNED,
4 REVERSED OR VACATED ON DIRECT APPEAL OR POSTCONVICTION REVIEW WHEN THE
5 CLAIMANT WOULD OTHERWISE HAVE BEEN ENTITLED TO A NEW TRIAL.

6 B. ALL PLEADINGS SHALL BE ENTITLED "IN THE MATTER OF THE ERRONEOUS
7 CONVICTION OF ____". THE CLAIMANT SHALL SERVE THE ATTORNEY GENERAL WITH A
8 COPY OF THE CLAIM. THE COURT SHALL DECIDE THE CLAIM. THE ARIZONA RULES OF
9 CIVIL PROCEDURE APPLY. THE ACTION SHALL BE BROUGHT IN THE COUNTY OF
10 CONVICTION OR IN MARICOPA COUNTY.

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

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

17 2. THE CLAIMANT IS PARDONED BASED ON INNOCENCE.

18 3. THE EFFECTIVE DATE OF THIS SECTION IF THE CLAIMANT WAS CONVICTED,
19 INCARCERATED AND RELEASED FROM CUSTODY BEFORE THE EFFECTIVE DATE OF THIS
20 SECTION.

21 D. THE ATTORNEY GENERAL SHALL RESPOND WITHIN THIRTY DAYS TO THE
22 CLAIM. THE ATTORNEY GENERAL MAY REQUEST A SINGLE THIRTY-DAY EXTENSION TO
23 RESPOND ON A SHOWING OF GOOD CAUSE. THE PARTIES MAY STIPULATE TO AN
24 ADDITIONAL EXTENSION OF TIME.

25 E. IF THE ATTORNEY GENERAL DOES NOT OBJECT IN THE RESPONSE, THE
26 COURT SHALL ENTER AN ORDER GRANTING THE ERRONEOUS CONVICTION CLAIM. IF THE
27 ATTORNEY GENERAL OBJECTS, THE COURT SHALL ORDER AND HOLD AN EVIDENTIARY
28 HEARING. A COURT ORDER THAT GRANTS OR DENIES THE CLAIM SHALL INCLUDE
29 FINDINGS OF FACT AND CONCLUSIONS OF LAW.

30 F. IF THE COURT ENTERS AN ORDER GRANTING THE CLAIM, THE COURT SHALL
31 AWARD COMPENSATION AS FOLLOWS:

1 1. FOR EACH YEAR THE CLAIMANT WAS INCARCERATED, TWO HUNDRED PERCENT
2 OF THE MEDIAN HOUSEHOLD INCOME IN THIS STATE AS IT EXISTED ON THE DATE THE
3 CLAIMANT WAS INCARCERATED AND AS DETERMINED BY THE UNITED STATES DEPARTMENT
4 OF HOUSING AND URBAN DEVELOPMENT AND ADJUSTED FOR INFLATION USING THE
5 CONSUMER PRICE INDEX FOR URBAN CONSUMERS. THE AMOUNT FOR ANY PARTIAL YEAR
6 SHALL BE PRORATED IN ORDER TO COMPENSATE THE CLAIMANT ONLY FOR THE PORTION
7 OF THE YEAR IN WHICH THE CLAIMANT WAS INCARCERATED.

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

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

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

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

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

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

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

31 G. COMPENSATION AWARDED TO THE CLAIMANT PURSUANT TO THIS SECTION
32 DOES NOT CONSTITUTE GROSS INCOME FOR THE PURPOSES OF TITLE 42 OR 43.

1 H. THE COURT SHALL ORDER THAT THE AWARD BE PAID IN ONE LUMP SUM TO
2 THE CLAIMANT.

3 I. IN ADDITION TO THE COMPENSATION AWARDED PURSUANT TO SUBSECTION G
4 OF THIS SECTION, THE CLAIMANT IS ENTITLED TO THE FOLLOWING SERVICES FROM
5 LICENSED OR ACCREDITED STATE INSTITUTIONS, AGENCIES OR PROVIDERS WITHIN
6 THIS STATE:

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

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

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

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

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

1 L. THE COMPENSATION AWARD MAY NOT BE OFFSET BY ANY EXPENSES INCURRED
2 BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE, INCLUDING THE
3 FOLLOWING:

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

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

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

21 N. NOTWITHSTANDING ANY OTHER LAW, ON ENTRY OF AN ERRONEOUS
22 CONVICTION RULING, THE COURT SHALL:

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

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

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

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

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

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

2 (f) THE IDENTITY OF THE ARRESTING LAW ENFORCEMENT AGENCY AND
3 CONVICTING COURT.

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

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

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

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

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

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

1 P. THE ARRESTING AND PROSECUTING AGENCIES SHALL CLEARLY IDENTIFY IN
2 EACH AGENCY'S FILES AND ELECTRONIC RECORDS THAT THE CLAIMANT WAS
3 ERRONEOUSLY CONVICTED AND THAT THE ARREST, CHARGE, CONVICTION OR
4 ADJUDICATION AND SENTENCE ARE EXPUNGED AND MAY NOT MAKE ANY RECORDS OF THE
5 EXPUNGED ARREST, CHARGE, CONVICTION OR ADJUDICATION AND SENTENCE AVAILABLE
6 AS A PUBLIC RECORD TO ANY PERSON EXCEPT TO THE CLAIMANT OR THE CLAIMANT'S
7 ATTORNEY.

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

15 R. THE CLAIMANT MAY REQUEST THAT THIS ACTION AND ERRONEOUS
16 CONVICTION RULING BE SEALED.

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

19 T. IF THE COURT DENIES AN ERRONEOUS CONVICTION CLAIM, THE CLAIMANT
20 MAY FILE A DIRECT APPEAL PURSUANT TO SECTION 13-4033, SUBSECTION A,
21 PARAGRAPH 3.

22 U. IF THE VICTIM HAS MADE A REQUEST FOR POSTCONVICTION NOTICE, THE
23 ATTORNEY GENERAL SHALL PROVIDE THE VICTIM WITH NOTICE OF THE CLAIMANT'S
24 CLAIM AND OF THE RIGHTS PROVIDED TO THE VICTIM IN THIS SECTION. UNLESS THE
25 VICTIM CONSENTS, THE VICTIM MAY NOT BE COMPELLED TO SUBMIT TO AN INTERVIEW
26 OR TESTIFY IN ANY PROCEEDING UNDER THIS SECTION.

27 V. IF THE COURT FINDS THAT THE CLAIMANT IS ENTITLED TO A JUDGMENT, A
28 VICTIM AS DEFINED IN SECTION 13-4401 IS ENTITLED TO REIMBURSEMENT FOR
29 MENTAL HEALTH TREATMENT FOR UP TO FIFTY-TWO CLINICAL HOURS WITHIN TWELVE
30 MONTHS AFTER THE COURT'S ORDER AWARDING COMPENSATION AT A MAXIMUM OF \$250
31 PER HOUR PURSUANT TO THE VICTIM COMPENSATION AND ASSISTANCE FUND
32 ESTABLISHED BY SECTION 41-2407. THE VICTIM DOES NOT NEED TO ESTABLISH ANY

1 OTHER ELIGIBILITY REQUIREMENTS TO RECEIVE REIMBURSEMENT FOR MENTAL HEALTH
2 SERVICES.

3 Sec. 2. Legislative findings

4 The legislature finds that:

5 1. Innocent persons who have been erroneously convicted of crimes
6 have been uniquely victimized, have distinct struggles reentering society,
7 have difficulty achieving legal redress due to a variety of substantive and
8 technical obstacles in the law and should have an available avenue of
9 redress over and above the existing tort remedies to seek compensation for
10 damages.

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

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

22 Amend title to conform

And, as so amended, it do pass

DAVID LIVINGSTON
CHAIRMAN

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