



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-seventh Legislature
First Regular Session

HB 2813: erroneous convictions; compensation

Sponsor: Representative Powell, LD 14

Committee on Public Safety & Law Enforcement

Overview

Outlines procedures and criteria for an individual who was wrongfully convicted and incarcerated in Arizona to seek compensation.

History

The Board of Executive Clemency (Board) is comprised of five members, who are appointed by the Governor and compensated on an hourly basis. The Board has exclusive power to pass upon and recommend reprieves, commutations, paroles and pardons to the Governor for any person who committed a felony offense. The Board can employ analysts and hearing officers to obtain information and conduct investigations and hearings to assist with the Board's function (A.R.S. §§ [31-401](#) and [31-402](#)).

Provisions

Erroneous Convictions

1. Allows a claimant to bring an action in superior court seeking compensation from Arizona for a felony conviction that they were incarcerated for if one of the following applies:
 - a) the claimant was pardoned based on innocence;
 - b) the claimant's conviction was reversed or vacated and the charges were dismissed or the claimant was found not guilty on retrial; or
 - c) the claimant's conviction was reversed or vacated and the claimant entered a plea of no contest, while maintaining a claim of innocence, after the conviction was overturned, reversed or vacated on direct appeal or postconviction review when the claimant would otherwise have been entitled to a new trial. (Sec. 1)
2. Specifies how all pleadings must be entitled. (Sec. 1)
3. Requires the claimant to serve the Attorney General (AG) with a copy of the claim. (Sec. 1)
4. Directs the court to decide the claim and use the Arizona Rules of Civil Procedure. (Sec. 1)
5. Requires the action be brought in the county of conviction or in Maricopa County. (Sec. 1)
6. Requires the claimant to bring the claim within two years after one of the following occurs:
 - a) the claimant's conviction is overturned or vacated and the charges against the claimant are dismissed, the claimant is found not guilty on retrial or the claimant enters a please of no contest, whichever occurs later;
 - b) the claimant is pardoned based on innocence; or

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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- c) the effective date of this Act, if the claimant was convicted, incarcerated and released from custody before the effective date of this Act. (Sec. 1)
- 7. Requires the AG to respond to the claim within 30 days and may request a single 30-day extension to respond on a showing of good cause. (Sec. 1)
- 8. Permits the parties to stipulate to an additional extension of time. (Sec. 1)
- 9. Stipulates that the AG has the burden of proving by clear and convincing evidence that the claimant is not entitled to compensation because the claimant either:
 - a) committed the offense for which the claimant was convicted; or
 - b) committed perjury, fabricated evidence or by the claimant's own conduct caused or brought about the conviction. (Sec. 1)
- 10. Specifies that a confession or admission later found to be false or a guilty plea does not constitute committing perjury, fabricating evidence or causing or bringing about the conviction. (Sec. 1)
- 11. Requires the court, if the AG does not object in the response, to enter an order granting the erroneous conviction claim. (Sec. 1)
- 12. Instructs the court, if the AG objects, to order and hold an evidentiary hearing. (Sec. 1)
- 13. Requires the court order that grants or denies the claim to include findings of fact and conclusions of law. (Sec. 1)

Compensation

- 14. Instructs the court, if the court enters an order granting the claim, to award compensation as follows:
 - a) for each year the claimant was incarcerated, 200% of the median household income in Arizona on the date the claimant was incarcerated;
 - b) the claimant can request additional compensation than the 200% of the median household income; and
 - c) reasonable attorney fees and costs of no more than \$25,000 unless the court authorizes a greater total. (Sec. 1)
- 15. Requires the court, if the claimant requests additional compensation, to hold an evidentiary hearing and consider the pro per status of the claimant in determining whether additional compensation is warranted. (Sec. 1)
- 16. Outlines the evidence a claimant may present in an evidentiary hearing for determining if additional compensation is warranted. (Sec. 1)
- 17. States the compensation awarded to the claimant through this Act does not constitute as gross income. (Sec. 10)
- 18. Directs the courts to order that the award be paid in one lump sum to the claimant. (Sec. 1)
- 19. Allows the claimant, in addition to any compensation awarded, reimbursement for:
 - a) mental health treatment for up to 52 clinical hours at a maximum of \$250 per hour within 12 months after the court's order awarding compensation;
 - b) up to 120 credit hours at any postsecondary educational institution, vocational school or trade school; and
 - c) up to four financial planning or literacy classes or consultations within 12 months after the court's order awarding compensation. (Sec. 1)

20. Details how a court is to determine the amount provided a claimant is entitled to receive. (Sec. 1)
21. Instructs the court to include in the judgment an award to Arizona that is deducted through this Act. (Sec. 1)
22. Prohibits the compensation award from being offset by any expenses incurred by Arizona including:
 - a) securing the claimant's custody or feeding, clothing or providing medical services for the claimant; and
 - b) the value of any services or reductions in fees for service, or the value thereof to be provided to the claimant that can be awarded to the claimant. (Sec. 1)
23. Requires the court, if they find that the claimant is entitled to compensation, to issue a finding that the claimant was erroneously convicted and served a specific amount of time erroneously incarcerated. (Sec. 1)
24. Directs the court clerk to send a certified copy of the order to the Arizona Department of Administration's (ADOA) Risk Management Revolving Fund (Fund) for payment from the Fund. (Sec. 1)
25. Instructs ADOA to remit from the Fund the payment to the claimant within 45 days. (Sec. 1)
26. Requires any outlined reimbursement claims to be submitted to ADOA for approval and paid from the Fund within 14 days after receipt. (Sec. 1)

Erroneous Conviction Ruling Criteria

27. Requires the court, on entry of an erroneous conviction ruling, to:
 - a) order the associated convictions and arrests expunged from all applicable state and federal systems and the records sealed;
 - b) direct the Arizona Department of Public Safety (DPS) to expunge and destroy any biological samples received by DPS. (Sec. 1)
28. Outlines what information the expungement order must include. (Sec. 1)
29. Requires the court clerk to send a certified copy of the order to DPS to implement the order and provide confirmation of the action to the court. (Sec. 1)
30. States that DPS is not required to expunge and destroy samples or a profile record that is associated with the claimant that relates to an unrelated offense. (Sec. 1)
31. Directs DPS to seal and separate the expunged record from their records and inform the appropriate state and federal law enforcement agencies of the expungement. (Sec. 1)
32. Instructs the Arizona Department of Corrections to seal and separate the expunged record from their records and not make the expunged conviction information publicly available. (Sec. 1)
33. Requires arresting and prosecuting agencies to identify in their records that the claimant was erroneously convicted and the arrest, charge, conviction or adjudication and sentence were expunged. (Sec. 1)
34. Prohibits arresting and prosecuting agencies from making the outlined records available as a public record to any person except the claimant or their attorney. (Sec. 1)

35. Requires the claimant to be treated as not having been arrested for or convicted of the expunged offense.
36. Prohibits the expunged arrest, charge, adjudication, conviction or sentence from being used in a subsequent prosecution by a prosecuting agency or court for any purpose. (Sec. 1)
37. Allows the claimant to state that the claimant has never been arrested for, charged with, adjudicated delinquent for, convicted of or sentenced for the expungement offense. (Sec. 1)
38. Permits the claimant to request that the actions in this Act and erroneous conviction ruling be sealed. (Sec. 1)

Miscellaneous

39. States that the court's decision to grant or deny an erroneous conviction claim is not res judicata on any other proceedings. (Sec. 1)
40. Stipulates that if the court denies an erroneous conviction claim, the claimant can file a direct appeal. (Sec. 1)
41. Details that if the court finds that the claimant is entitled to a judgment, a specified victim is entitled to reimbursement for outlined mental health treatment. (Sec. 1)
42. States that the victim does not need to establish any other eligibility requirement to receive reimbursement for mental health services. (Sec. 1)
43. Contains legislative findings. (Sec. 2)