

House Engrossed

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

CHAPTER 237

# **HOUSE BILL 2321**

AN ACT

AMENDING TITLE 12, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 17;  
AMENDING TITLE 13, CHAPTER 40, ARIZONA REVISED STATUTES, BY ADDING SECTION  
13-4440; RELATING TO DECLARATION OF INNOCENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
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.  
23 E. IF A CHARGE WAS FILED:  
24 1. THE PETITION, IF FILED BY THE PERSON, SHALL BE SERVED ON THE  
25 PROSECUTING AGENCY AND, IF APPLICABLE, A COPY OF THE PETITION SHALL BE  
26 PROVIDED TO THE DEFENSE ATTORNEY.  
27 2. THE PROSECUTING AGENCY, ON THE FILING OF THE PETITION, SHALL  
28 PROVIDE NOTICE TO ALL VICTIMS PURSUANT TO SECTION 13-4440.  
29 F. THE COURT MAY CONDUCT A HEARING TO DETERMINE THE PERSON'S FACTUAL  
30 INNOCENCE.  
31 G. IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT THE  
32 PERSON'S NAME WAS USED AS SET FORTH IN SUBSECTION A OF THIS SECTION THE COURT  
33 SHALL FIND THE PERSON FACTUALLY INNOCENT OF THE OFFENSE.  
34 H. ON A FINDING OF FACTUAL INNOCENCE THE COURT SHALL NOTIFY THE  
35 FOLLOWING, IF APPLICABLE:  
36 1. THE PERSON.  
37 2. THE PROSECUTING AGENCY.  
38 3. THE LAW ENFORCEMENT AGENCY.  
39 4. THE DEFENSE ATTORNEY.  
40 I. THE COURT SHALL CONSIDER A PERSON OR PARTY'S REQUEST TO EXPEDITE  
41 THE JUDICIAL DETERMINATION.  
42 J. NOTHING IN THIS SECTION SHALL DELAY A PROCEEDING OR IN ANY OTHER  
43 MANNER AFFECT A CRIMINAL CASE.  
44 K. FOR THE PURPOSES OF THIS SECTION, "PERSONAL IDENTIFYING  
45 INFORMATION" HAS THE SAME MEANING PRESCRIBED IN SECTION 13-2001.

1 12-772. Factual improper party status; judicial determination;  
2 procedure; definition

3 A. A PERSON, OR A PARTY TO THE ACTION ON BEHALF OF THE PERSON, MAY  
4 PETITION THE SUPERIOR COURT FOR A JUDICIAL DETERMINATION OF THE PERSON'S  
5 FACTUAL IMPROPER PARTY STATUS IF AS A RESULT OF THE PERSON'S PERSONAL  
6 IDENTIFYING INFORMATION BEING TAKEN THE PERSON'S NAME WAS ENTERED AS OF  
7 RECORD IN A CIVIL ACTION OR JUDGMENT.

8 B. THE PETITION SHALL BE FILED IN THE SUPERIOR COURT IN THE COUNTY IN  
9 WHICH THE CIVIL ACTION WAS FILED.

10 C. IF THE CIVIL ACTION WAS FILED IN A JUSTICE OF THE PEACE COURT, THE  
11 JUSTICE OF THE PEACE SHALL MAKE A CERTIFIED COPY OF ALL DOCKET ENTRIES AND  
12 THE RECORD OF THE PROCEEDINGS IN THE ACTION AND TRANSMIT IT TOGETHER WITH A  
13 CERTIFIED COPY OF THE BILL OF COSTS AND THE ORIGINAL PAPERS IN THE ACTION TO  
14 THE CLERK OF THE SUPERIOR COURT.

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

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

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

22 G. THE COURT SHALL NOTIFY THE PERSON AND ALL PARTIES OF THE COURT'S  
23 FINDING.

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

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

28 12-773. Factual innocence; factual improper party; other  
29 remedies

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

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

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

36 13-4440. Notice of petition of factual innocence; right to be  
37 heard; hearing; final decision

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

41 B. THE PROSECUTING AGENCY SHALL PROVIDE WRITTEN NOTICE OF THE  
42 FOLLOWING TO THE VICTIM:

- 1           1. THE DATE, TIME AND LOCATION OF THE HEARING.
- 2           2. THE VICTIM'S RIGHT TO BE PRESENT AND BE HEARD AT THE HEARING.
- 3           C. IF THE COURT MAKES A DETERMINATION OF FACTUAL INNOCENCE PURSUANT TO
- 4 SECTION 12-771, THE PROSECUTING AGENCY SHALL PROVIDE THE VICTIM WITH A COPY
- 5 OF THE COURT ORDER WITHIN FIFTEEN DAYS AFTER THE ORDER IS ENTERED.
- 6           Sec. 3. Effective date
- 7           This act is effective from and after January 1, 2009.

APPROVED BY THE GOVERNOR MAY 23, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 23, 2008.