



 Task Force on Fair Justice for All

Meeting Agenda

May 21, 2018 - 10:00 a.m. to 2:00 p.m.

State Courts Building ♦ 1501 West Washington ♦ Conference Room 101 ♦ Phoenix, Arizona

Fair Justice for All Task Force [Webpage](#)

Chair – Dave Byers Vice-Chair – Tom O’Connell

TIME	AGENDA ITEM	PRESENTER
10:00 a.m.	Welcome and opening remarks	<i>Dave Byers, Chair Tom O’Connell, Vice-chair</i>
	Approval of minutes from November 27, 2017 <input type="checkbox"/> Formal Action/Request	
10:10 a.m.	Update from the Mental Health and the Criminal Justice System Subcommittee <input type="checkbox"/> Formal Action/Request	<i>Kent Batty, Chair Dr. Dawn Noggle, Maricopa County Correctional Health</i>
11:15 a.m.	Update on recommendations in progress	<i>Don Jacobson, AOC Senior Special Project Consultant</i>
12:00 p.m.	LUNCH BREAK (\$5.00)	
12:30 p.m.	Policy update <ul style="list-style-type: none">• Legislation HB2169 Driver license; sanctions; restricted licenses HB2312 Setting aside conviction; requirements HB2313 Sentencing; monetary obligations; fine mitigation HB2314 Misdemeanor sentence; authorized disposition HB2315 Intensive probation; employment wages• Rules: R-17-0015 Changes to Criminal Rules 4.2, 5.1, 5.4, 7.2, 7.4, 26.12 and 27.8	<i>Jerry Landau, AOC Government Affairs Director</i> <i>Dave Withey, AOC Chief Counsel</i>

- 1:15 p.m. Update on the Post-Conviction Action Subcommittee *Jerry Landau, Chair*
- Rules and forms
 - Formal Action/Request*** *Tom O'Connell, AOC*
 - Update Juvenile Adjudication Set-aside workgroup *Pretrial Services Manager*
- 1:50 p.m. Authority to approve meeting minutes *Dave Byers*
- Formal Action/Request***
- 1:55 p.m. Call to the public *Dave Byers*
- 2:00 p.m. Adjourn



Task Force on Fair Justice for All

Draft Minutes

November 27, 2017 - 10:00 a.m. to 2:00 p.m.

Present: Dave Byers, Tom O’Connell, Judge Michael Bluff, Judge Maria Elena Cruz, Jeff Fine, Judge John Hudson, Robert James, Paul Julien, Judge Dorothy Little, Jeremy Mussman, Tony Penn, Dianne Post, Judge Antonio Riojas, Leonard Ruiz, Alessandra Soler (Jared Keenan), Judge Don Taylor, Kathy Waters

Telephonic: Mary Ellen Sheppard, Rebecca Steele

Absent: Kent Batty, Kirstin Flores, Ryan Glover, Michael Kurtenbach, Judge Lisa Roberts, Lisa Royal

Presenters/Guests: Donald Jacobson, Julie Dybas, Judge Joseph Olcavage, Jerry Landau, Jennifer Greene, Judge Ron Reinstein (Ret.), Heather Murphy

Staff: Theresa Barrett, Susan Pickard, Sabrina Nash, Kathy Sekardi, Administrative Office of the Courts (AOC)

Welcome and Opening Remarks

David Byers welcomed the members and asked Kathy Sekardi to call the roll. Mr. Byers noted the recently signed administrative order extending this task force through to June 20, 2018.

Approval of Minutes from May 2, 2017

David Byers presented the minutes of the May 2, 2017, meeting.

Motion: To approved the minutes of the May 2, 2017, meeting as written. The motion was seconded. **Action:** Passed **Vote:** Unanimous

Update on Recommendations in Progress

Don Jacobson provided an update on the progress being made on the Arizona Judicial Council-approved Task Force recommendations.

Setting release conditions

- Changes have been made to Rules 6 and 7, and Forms 6 and 7 to establish options regarding appearance bonds and release conditions.
- Administrative Order (A.O.) 2017-69 changes “bond schedules” to “fine and deposit schedules.”

- The adoption of Petition R-17-0015 changes preventative detention goes into effect April 2, 2018.
- The Post-Conviction Actions Subcommittee has been established and is working toward statute and rule changes regarding set aside.
- Public Safety Assessments (PSA) have been implemented in all courts. A pilot of moving court information into the Justice Web Interface (JWI) to allow all information to be accessible in a single source. Next step is to work toward reducing human involvement by identifying only those areas where interpretation is needed.

Financial Sanctions

- Statements regarding payment plans have been added to the Arizona Traffic Ticket and Complaint (ATTC)
- Model language regarding payment plans has been developed and distributed to all courts for use on web sites.
- A.O. 2017-80 requires payment plans to be instituted in all courts and specifies the types of payment to be accepted by courts.
- Scripts and tools for reduction of legal financial obligations, and CAP and FRP programs have been developed.
- An Order to Show Cause bench card has been developed.
- The adoption of R-17-0015 also requires courts to only use a warrant when all other options have failed.

Education

- A.O. 2017-101 makes specialized training for all judges who conduct Initial Appearance (IA) hearings mandatory.
- Training sessions and tools for reducing fines and surcharges, and determining ability to pay are being presented at every opportunity.

Defendant treatment needs

- The Mental Health in the Criminal Justice System Subcommittee has been established to review statute and rules, and develop standards and reporting processes.
- Developed a template A.O. for presiding judges that would allow Rule 11 hearings to be conducted by limited jurisdiction courts.
- A State Justice Institute (SJI) grant to help develop protocols, with the help of the National Center for State Courts (NCSC), for presiding judges to hold a convening of local stakeholders related to mental illness in the criminal justice system has been submitted.

Additional Efforts

- Text Notification System – pilot complete - rolling out to all AJACs courts – Tucson Police Department has made the cell phone number field mandatory. The officer cannot print the ticket without it.

- Online Dispute Resolution – pilots moving forward under the Arizona Commission on Access to Justice.
- Legislative proposals, similar to last year’s, are ready to be submitted to the legislative process.
- In agreement with Clean Elections, process for reducing surcharges has been modified.
- Researching the use of online dispute resolution process for correctable violations.
- Exploring alternatives to immediate suspension of drivers licenses due to a civil traffic failure to appear.

Side Note:

The Pretrial Justice Institute (PJI) released a study of the state of pretrial justice in America in November 2017. Arizona received one of only ten B’s given in the study. Only New Jersey received an A.

Concerns/Comments:

- Has outreach been made to members of the law enforcement master list regarding the changes to the ATTC? Yes.
- The benefit eligibility letter from the Department of Economic Security provides the most accurate information and can be accessed online and printed by the recipient.
- Is the text notification system available in Spanish? Yes.

Action Item: Jeremy Mussman offered to share a letter regarding social security disability benefits and discretionary fines and fee with Kathy Waters and David Byers.

[Report on the Scottsdale Municipal Court initiatives based on Fair Justice for all Task Force recommendations](#)

Julie Dybas, Court Administrator introduced Judge Joseph Olcavage, Presiding Magistrate Scottsdale Municipal Court, who provided an update on the court’s efforts to implement the Task Force recommendations. While there have been challenges, the court has achieved the following:

CAP: Implemented 11-18-16 and through 11-18-17. Program requires 5 to 20% down

- Cases in program 1,699
- Cases removed 751
- Cases paid in full 308
- Total amount waived 0
- Total paid in program \$662,143.49

TIME PAYMENTS: Payment contracts are freely given, based on ability to pay. Minimum payment is \$50, but can be waived. No judicial involvement.

AVAILABLE PAYMENT OPTIONS: Pay on-line (court pays transaction fee); over the phone, in-person, recurring billing; Apple Pay; and Google Wallet

Judge Olcavage shared the Scottsdale's Simplified Payment Ability Form, automated "Ability to Pay" tool, and notification models for failure to pay and failure to appear.

Some of Scottsdale's programs include:

- Walk-in calendar to address warrants,
- Exploration of online capability to post bond,
- A public defender is present for in-custody Initial Appearance hearings,
- If a defendant is going to be referred to Mental Health Court an attorney is appointed,
- An MVD kiosk is available at the court,
- Two Information windows to assist customers have been added,
- Closed caption videos (arraignment video in English and Spanish),
- Telephonic pleas,
- Call-in available for OSC,
- Ability to email or fax proof of compliance,
- Submitting car monitor report to the court enables defendant not to appear in court that month, and
- Exploring LA County approach of providing information to the public using avatars

[Update from the Mental Health and the Criminal Justice System Subcommittee](#)

On behalf of Chair, Kent Batty, Don Jacobson provided an update on the progress of the Mental Health and the Criminal Justice System Subcommittee. This subcommittee is tasked to examine the management of cases for individuals who have mental health issues.

[Rule 11 Workgroup progress](#)

Mr. Jacobson began with a review of the template administrative order to implement competency proceedings in criminal matters in limited jurisdiction courts, then discussed the Rule 11 policy and procedure outline. Mr. Jacobson thanked the Glendale and Mesa Municipal Courts for their work in piloting the process.

Dianne Post expressed her concern about ensuring the mental health providers are qualified to be appointed as a mental health expert and asked that additional guiding language be added to the outline. Jeremy Mussman offered to provide language to Ms. Post regarding Maricopa County's process for annual or bi-annual review of court appointed counsel who appear on their list. Mr. Byers offered to take the language to AJC for consideration.

Action Item: Dianne Post to provide additional language regarding evaluations of expertise to staff.

Motion: To support the adoption of the template administrative order and the policy and procedure manual outline for use, if a county wants to extend the ability to conduct Rule 11 hearings to a limited jurisdiction court. The motion was seconded. **Action:** Passed **Vote:** Unanimous

Proposed Rule 11.5 amendments

The confluence of this Task Force's recommended amendments and those of the Criminal Rules Task Force created some confusion between the processes managed by the superior court and those managed by the limited jurisdiction court.

At issue are:

- Whether a superior court should authorize a limited jurisdiction court to order restoration of competency.
- Section (b)(2)(A)(i) – The superior court is mandated to order competency restoration treatment, if it finds the defendant to be restorable. This offers no alternative for those cases in which pursuit of restoration does not make sense. The superior court should have the option to dismiss.
- Section (b)(2)(A)(ii) – ‘15 months’ should be changed to “within the timeframes allowed by law” mirroring (b)(2)(A)(i).
- Section (b)(3)(A) – Concern was expressed that the language in (A) makes referral to superior court mandatory even if the State moves to dismiss the charge, and in the case of minor crimes, the resources required to pursue civil commitment or appointing a guardian may exceed the value to the community of continuing supervision over the defendant.

Motion: To request that the Mental Health Subcommittee allow the Task Force to submit a rule change petition in January to:

- 1) change section (2)(A)(ii) by deleting “15 months” and replacing that language with “the timeframes allowed by law;”
- 2) maintain option for the superior court to authorize the limited jurisdiction court to order competency restoration treatment; and
- 3) clarify that a limited jurisdiction judge cannot order civil commitment or appointment of a guardian;

The motion was seconded. **Action:** Passed. **Vote:** Unanimous.

The Task Force agreed the LJ court should not be tasked with oversight of non-restorable defendants, but discussed whether, in those cases in which the non-restorable defendant appears to be a danger to self or others, there shouldn't be a mechanism for the LJ court to order initiation of civil commitment proceedings by somebody. The Task Force referred this issue to the Subcommittee for a recommendation.

The discussions regarding the Sequential Intercept Model, a Rule 11 records central repository, and LJ court competency hearing outcome reporting that were listed on the agenda were tabled due to time.

Update from the Post-Conviction Action Subcommittee

Jerry Landau, Subcommittee Chair, provided an overview of the subcommittee; its three workgroups: Statutes, Rules and Records; and newly formed Juvenile Adjudication Set Aside, and progress.

Mr. Landau highlighted the proposed changes to A.R.S. §13-907

1. A person will be informed of the right to apply for a set aside at sentencing.
2. There is a two-year waiting period, if the person is sentenced or revoked to the Department of Corrections.
3. The Clerk of Court will not charge a fee for filing the application.
4. If a conviction is set aside:
 - a. The Clerk of the Court is required to notify the Department of Public Safety (DPS) and must restrict from public access and shall not disclose any information regarding the case except to a law enforcement agency, prosecuting agency or probation department, or by court order.
 - b. DPS will annotate the set aside on the person's criminal history, but will not redact or remove a record.
 - c. The person is not required to disclose the conviction or the arrest.
 - d. Notwithstanding section 13-905 or 13-906, the person's right to possess a gun or firearm is restored.
5. Nothing precludes an employer or prospective employer from either conducting a background check.
6. Set aside does not apply to the conviction of a criminal offense that involves a serious or violent or aggravated offense as list in section 13-706, an offense list in title 13, chapter 23 or title 13, chapter 35.1, an offense which the person is required to register pursuant to section 13-3821, an offense for which there has been a finding of sexual motivation pursuant to section 13-118, or a moving traffic violation.

Mr. Landau noted that discussion is ongoing about whether to exclude criminal offenses involving a dangerous offense from set aside. While the subcommittee previously did not exclude dangerous offenses, the topic will be reopened at the November 30th meeting because the proposed legislation may not move forward without the exclusion.

Concerns/Comments:

- Leave dangerous offenses in the list of exclusions or remove both dangerous offenses and the restoration of gun rights.
- Removal of dangerous offenses from the list of exclusions may greatly expand the restoration of gun rights and unintended consequences of that restoration.
- Dangerous offenses include a person having any instrument that could be used to cause serious bodily injury, and is overly broad. Whereas violent offense covers those offenses that the truly violent and serious offenses.

- Dangerous offenses are usually dropped in association with a plea agreement. When those offenses are charged, the offense was usually committed with a knife or a gun.
- Not excluding moving traffic violation would have numerous Arizona Department of Transportation (ADOT) ramifications.
- Breakup the dangerous offenses by excluding dangerous offenses that result in physical injury.

Motion: To support the amendments to A.R.S. § 13-907 with the exclusion of dangerous offense from set aside. The motion was seconded. **Action:** Passed **Voice Vote:** While there were members who voted “no,” the majority of the members voted Yea.

The vote regarding the Rules and Forms and the discussion regarding juvenile adjudication set aside that were listed on the agenda were tabled due to time.

Legislative Update

Jerry Landau reviewed the three restructure bills on which the Arizona Judicial Council (AJC) voted to seek legislation.

2018:01: driver license; sanction; civil traffic violations

- permits the court to restrict, in addition to suspend, a driver license,
- adds assessments to the list of financial obligations the Supreme Court may include,
- permits the court to employ alternative sanctions to community restitution upon a DUI conviction,
- permits the court to mitigate any mandatory civil penalty if the payment would cause a hardship,
- reclassified driving on a license suspended for failure to appear or pay to a civil traffic violation, and
- removes the requirement that law enforcement impound a vehicle if a person is driving on a suspended license.

2018-02: criminal offenses; monetary obligations

- permits a judge to mitigate any fine for hardship reasons, or waive all or part of mandatory community restitution due to medical condition,
- adds civil penalties and surcharges (except for Clean Elections) to the list of financial obligations for which a court may order community restitution,
- reduces annual interest on a criminal restitution order in favor of the state from 10% to 4%,
- allows a probationer to be eligible for earned time credit if restitution payments are current, and

- removes the ability to revoke probation at a civil contempt hearing and substitutes the ability to refer for revocation.

2018-03: sentencing; misdemeanors – authorizes the court to impose a term of community restitution, education, or treatment.

Call to the public

No persons from the public made comment.

A task force member suggested the addition of “Attaching court records may be helpful.” to the forms that were in the meeting packet, but were not discussed.

Mr. Byers noted that a final meeting of the Task Force would be scheduled for summer 2018.

Adjournment

Mr. Byers adjourned the meeting at 2:20 p.m.

BENCH CARD FOR ABILITY TO PAY AT TIME OF SENTENCING IN CRIMINAL CASES AND CIVIL TRAFFIC CASES

Court-ordered legal financial obligations (LFOs) include all local or state, discretionary or mandatory fines, penalties, costs, fees, surcharges, assessments, restitution and other court-ordered financial sanctions. These sanctions may be ordered in criminal cases and civil traffic cases.

Assessment of a defendant’s ability to pay may be conducted by court personnel, performing verification through appropriate tools or by the judicial officer posing questions to the defendant.

In criminal cases, a court must impose “the full amount of the economic loss to the victim as determined by the court and in the manner as determined by the court or the court’s designee,” as required by ARS §§13-603(C), and 13-804(C)&(E). Restitution is exempt from any payment alternatives imposed for other types of financial obligations, but may be the subject of a time payment plan.

Step 1 – Application of Credits

- A. Apply Credit for Time Served if applicable. (§31-145).
- B. Apply Credit for Community Restitution if applicable and when allowed. (§13-824)

Step 2 – Defendant Self-Declaration

- A. “Can you pay this in full today?”
- B. “How much can you pay today?”

Step 3 – Determination of Eligibility for Fine Reduction

- A. Affidavit by defendant to claim a hardship.
- B. Confirmation of hardship by:
 1. Proof that defendant receives income-based public assistance
 2. DES eligibility check
 3. Automated income check
 4. Defendant’s affidavit or response to questions under oath

2018 Federal Poverty Level (FPL) Income Based on Family Size		
Family Size	130% of FPL	200% of FPL
Individual	\$15,779	\$24,276
Household of 2	\$21,395	\$32,916
Household of 3	\$27,011	\$41,556
Household of 4	\$32,627	\$50,196
Household of 5	\$38,243	\$58,836
Household of 6	\$43,859	\$67,476

Step 4 – Granting a Hardship Mitigation¹

At sentencing, the judge may impose a fine amount that is less than the court’s presumptive fine amount, when the judge deems it to be appropriate and as allowed by law. Consider income as a percentage of the Federal Poverty Level (FPL) based on household size. Consider:

- A. At least 25% mitigation if the household income is between 200% and 130% of FPL²;
- B. At least 50% mitigation if the household income is less than 130% of FPL, or receipt of income-based public assistance.

Step 5 – Payment

- A. Initial payment (what can be paid today)
- B. Establishment of payment plan for the balance owed
- C. Community restitution in lieu of monetary payment, if permitted by ARS §13-824

¹The fine and surcharges should be reduced proportionately unless a mandatory fine or sanction is included, then the amount may not be reduced to an amount less than the mandatory fine or sanction. Additional restrictions on surcharges may apply, see the *Penalty Assessment and Surcharge Guide*.
<http://www.azcourts.gov/Portals/27/SurchargeGuide%2001012018.pdf>

²U.S. Dep’t of Health & Human Servs., Poverty Guidelines, Jan. 13, 2018, <https://aspe.hhs.gov/poverty-guidelines>

The Operating Under the Influence statutes of A.R.S. §§ 5-395.01, 28-1389 and 28-8292 prohibit the waiving of a fine or assessment pursuant to those articles or a surcharge imposed pursuant to section 12-116.01 or 12-116.02.

The court may examine the following factors to help determine ability to pay:

- a. Whether the defendant receives income-based public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), veterans' disability benefits, or other state-based benefits provided through the Arizona DES. (All such benefits are not subject to attachment, garnishment, execution, levy, or other legal process);
- b. Income, including whether income is at or below 130% or between 130% and 200% of the Federal Poverty Level (FPL) (current guidelines available at <https://aspe.hhs.gov/poverty-guidelines>);
- c. Financial resources, assets, financial obligations, and number of dependents;
- d. Whether the defendant is homeless, incarcerated, or resides in a mental health facility;
- e. Basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support;
- f. The defendant's efforts to acquire additional resources, including any permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
- g. Other LFOs owed to the court or other courts;
- h. Whether an LFO payment would result in hardship to the defendant or his/her dependents; and
- i. Any other special circumstances that may bear on the defendant's ability to pay.

BENCH CARD FOR ARS §13-810 ORDER TO SHOW CAUSE HEARINGS (OSC), LAWFUL COLLECTION OF LEGAL FINANCIAL OBLIGATIONS

Court-ordered legal financial obligations (LFOs) include all local or state, discretionary and mandatory fines, costs, fees, surcharges, assessments, restitution and other court ordered financial sanctions in criminal cases. Willful failure to comply with court-ordered LFOs may result incarceration, except in civil traffic cases.¹

A court may not incarcerate a defendant for nonpayment of a court-ordered legal financial obligation unless the court holds a hearing and makes one of the following findings:

1. *The failure to pay was willful and not due to an inability to pay; or*
2. *The failure to pay was due to an intentional failure to make bona fide efforts to pay.*

To make the determination of willfulness, the court should:

Step 1—Confirm that adequate notice of the hearing to determine ability to pay was provided.

Notice should include the following information:

- a. Hearing date and time;
- b. Total amount claimed due;
- c. That the court will evaluate the defendant's ability to pay at the hearing;
- d. That the defendant should bring any documentation or information the court should consider in determining ability to pay;
- e. That incarceration may result if the court finds that the defendant had the ability to pay and willfully refused; and
- f. That a defendant unable to pay can request payment alternatives, including, but not limited to, community restitution or a time payment plan.

Step 2—Provide meaningful opportunity to explain at the hearing.

The defendant must have an opportunity to explain:

- a. Whether the amount due is incorrect; and
- b. The reason(s) for any nonpayment (e.g., inability to pay).

Step 3—The following are factors the court should consider to determine willfulness:

- a. Whether defendant is receiving income-based public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), veterans' disability benefits, or other state based benefits provided through the Arizona DES. (All such benefits are not subject to attachment, garnishment, execution, levy, or other legal process);
- b. Income, including whether income is at or below 130% of the Federal Poverty Level (FPL)²;
- c. Financial resources, assets, financial obligations, and dependents;
- d. Whether the defendant is homeless, incarcerated, or resides in a mental health facility;
- e. Basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support;
- f. The defendant's efforts to acquire additional resources, including any permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
- g. Other LFOs owed to the court or other courts;
- h. Whether LFO payment would result in hardship to the defendant or his/her dependents; and
- i. Any other special circumstances that may bear on the defendant's ability to pay.

¹ Order to Show Cause hearings under ARS §13-810 are not used in civil traffic cases.

² U.S. Dep't of Health & Human Servs., Poverty Guidelines, Jan. 13, 2018, <https://aspe.hhs.gov/poverty-guidelines>

Step 4—At the hearing, the court should find on the record:

- a. A determination of willfulness or intentional failure to make bona fide efforts to pay.
- b. Any fine payment alternatives imposed in 5 below.

Step 5—Consider alternative sanctions for both those who have been found willful and not willful of nonpayment pursuant to ARS §13-810(D) & (E).

The options for those defendants who willfully failed to pay, or intentionally failed to make a good faith effort to pay, after a finding of contempt include:

- a. Order the defendant to perform community restitution;
- b. Enter a criminal restitution order pursuant to ARS §13-805;
- c. Enter a writ of criminal garnishment pursuant to ARS §13-812. This does not discharge a defendant who is incarcerated for nonpayment until the amount owed or a portion of the amount owed is paid;
- d. Order defendant incarcerated in the county jail until the LFO or a specified portion of it is paid.
- e. Refer for probation revocation conducted under Rule 27 of the Rules of Criminal Procedure. Probation revocation cannot be determined at a §13-810 OSC hearing.

The options for those defendants who were not willful in nonpayment, or have made a good faith effort to pay include:

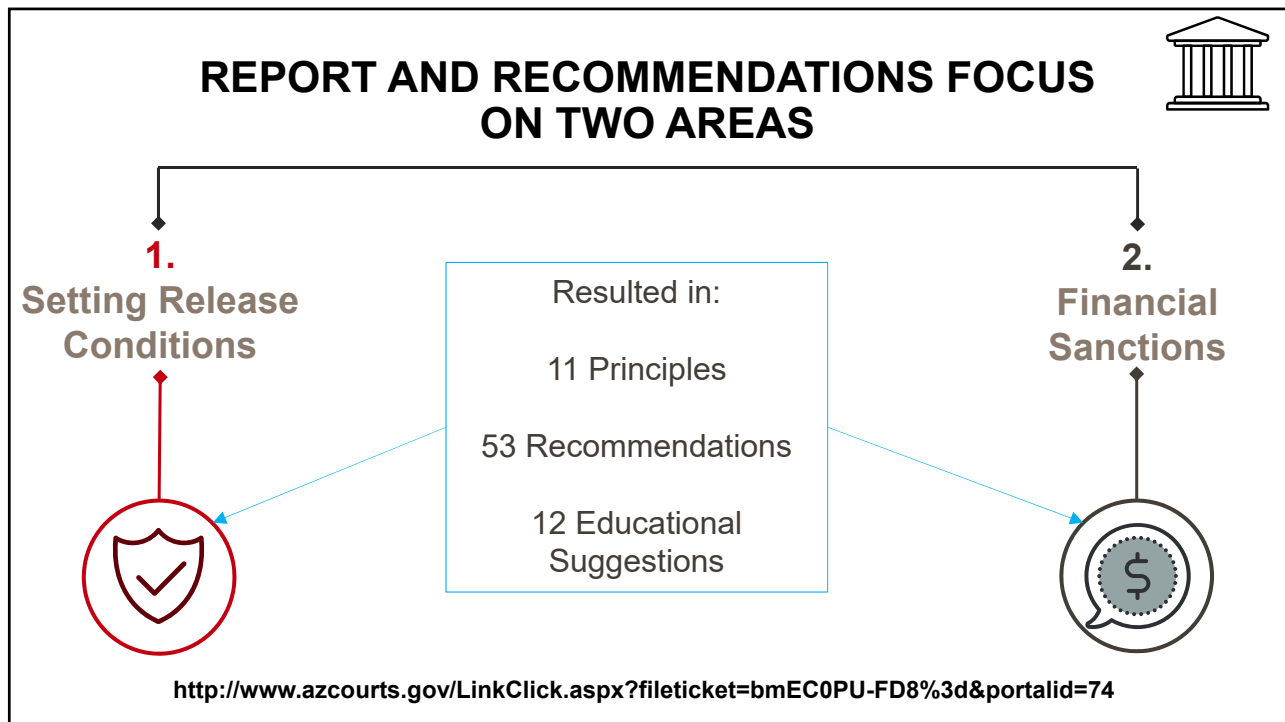
- a. Re-establish any original agreement regarding the payment of the LFO;
- b. Modify the manner in which the amount owed is to be paid. This may include an extension of time to pay, the establishment or the modification of a time payment plan, ordering community restitution or allowing credit for community restitution when permitted by ARS §13-824;
- c. Enter a criminal restitution order pursuant to ARS §13-805;

Enter a writ of criminal garnishment pursuant to ARS §13-812. This does not discharge a defendant who is incarcerated for nonpayment until the amount owed or a portion of the amount owed is paid.

2018 Federal Poverty Level (FPL) Income Based on Family Size

<i>Family Size</i>	<i>130% of FPL</i>	<i>200% of FPL</i>
<i>Individual</i>	<i>\$15,779</i>	<i>\$24,276</i>
<i>Household of 2</i>	<i>\$21,395</i>	<i>\$32,916</i>
<i>Household of 3</i>	<i>\$27,011</i>	<i>\$41,556</i>
<i>Household of 4</i>	<i>\$32,627</i>	<i>\$50,196</i>
<i>Household of 5</i>	<i>\$38,243</i>	<i>\$58,836</i>
<i>Household of 6</i>	<i>\$43,859</i>	<i>\$67,476</i>

Courts must impose “the full amount of the economic loss to the victim as determined by the court and in the manner as determined by the court or the court’s designee,” as required by ARS §§13-603(C) and 13-804(C) & (E). Restitution is exempt from any payment alternatives imposed for other types of financial obligations, but may be the subject of a time payment plan.



AREAS OF IMPLEMENTATION



Setting Conditions of Release

Risk based release decisions



Financial Sanctions

Accountability with attainability.



Address Defendants Treatment Needs

Recognizing the therapeutic needs of individuals.



Education

Developing new ways to look at decision making.

<http://www.azcourts.gov/LinkClick.aspx?fileticket=bmEC0PU-FD8%3d&portalid=74>



3



SETTING RELEASE CONDITIONS



Rule 7.1 – Listing of options in setting of release conditions, including unsecured bonds, and modifications to Forms 6 and 7 (4-3-17).

Rule 7.3b(2) – No bond schedule, no bond that results in unnecessary pretrial incarceration solely because the person is unable to pay the bond and least onerous alternative must be used (4-3-17).

Rule 6.1(b)2 – Appointment of counsel for the limited purpose of release conditions at the Initial Appearance (4-3-17).

Rule 26.12 – Encourage voluntary compliance with court ordered financial obligations (1-1-18).

Rule 27.8(b)4 – Statements made at an OSC cannot be used at a probation revocation hearing (1-1-18).

Rule 7.2 – Non-bailable offenses and Simpson hearings (4-2-18).

Policy changes



SETTING RELEASE CONDITIONS

Practical results?



5



SETTING RELEASE CONDITIONS

Bonds and Release Conditions

Changes to Rules and Forms
Hierarchy and least onerous conditions
of release.

“Bond schedules” now “Fine and
deposit schedules.”



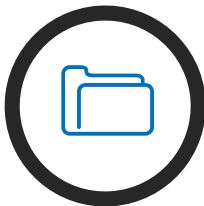
FTP and Preventative Detention

Criminal Rules changes (4-2-18)
provide options when defendants
fail to pay sanctions; changes in
release proceedings and no bail
hearings.



Post Conviction Actions

Working toward rule and statute
changes for set aside and
expungement.

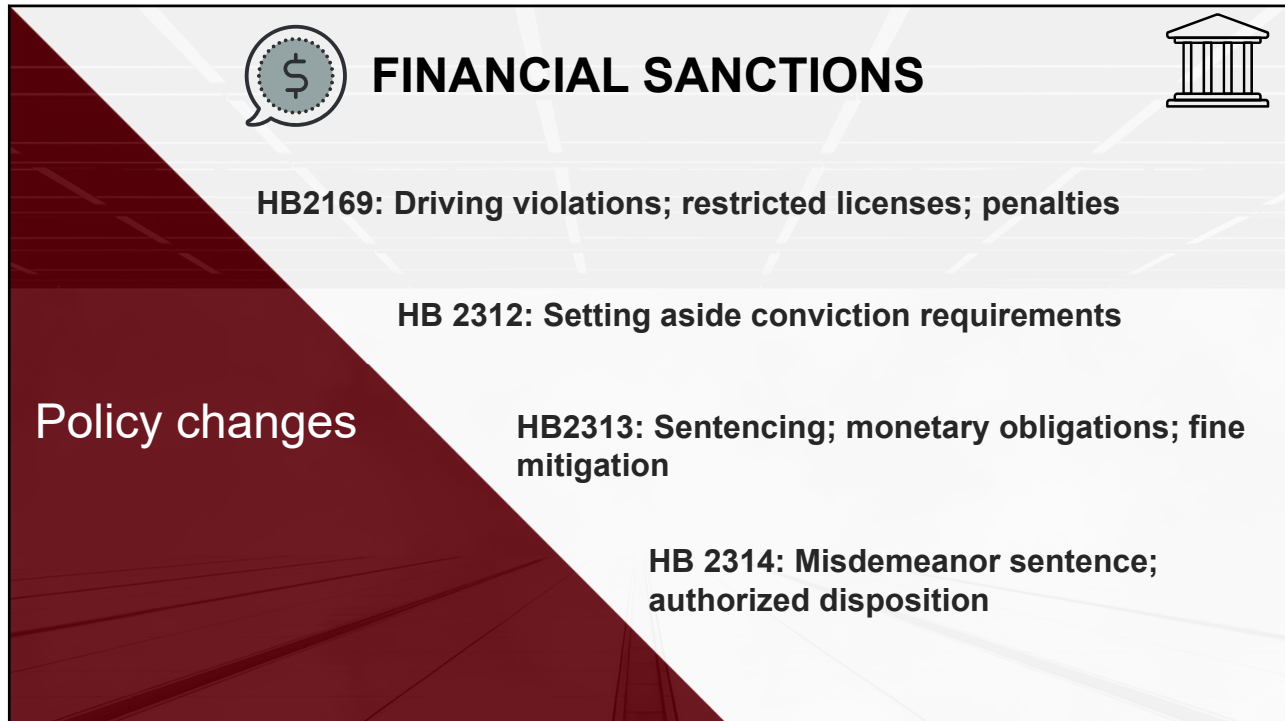




Public Safety Assessments in all Courts

Pilot – Court info on JWI (Jan. 2018).
Working to reduce dependency on
human intervention.



6



 **FINANCIAL SANCTIONS** 

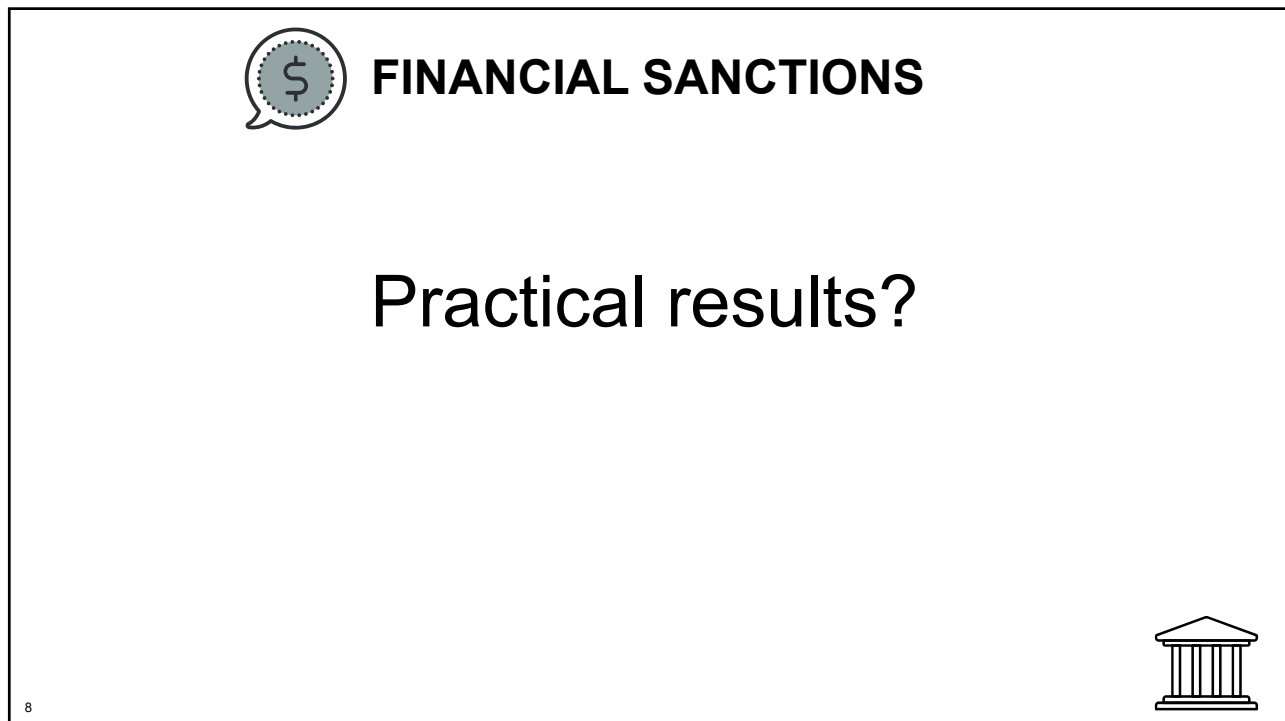
HB2169: Driving violations; restricted licenses; penalties



HB 2312: Setting aside conviction requirements

Policy changes

HB2313: Sentencing; monetary obligations; fine mitigation

HB 2314: Misdemeanor sentence; authorized disposition



 **FINANCIAL SANCTIONS** 

Practical results?

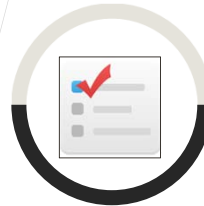
8



FINANCIAL SANCTIONS

Statements on ATTC, Web Sites and Correspondence

Model language for web sites and correspondence in English and Spanish.



Payment Options and Time Payment Plans

Consistent requirements set

Scripts and Tools for Reduction of Fines

Bench Cards w/updated guidelines for LFOs. ACJA -CAP and FRP programs. DOC Employment Centers and DL reinstatement.



Order to Show Cause

Bench Cards/rules guide courts to use a warrant only when other options fail.

<http://www.azcourts.gov/Portals/22/admorder/Orders17/2017-81%20FINAL.pdf>



9



EDUCATION



AO 2017-101 - mandatory training for all IA judges.

Training broadcast on determining no bond and Simpson hearing

Policy changes

Changes to New Judges Orientation and bench books.

Ongoing training in various venues.



EDUCATION

Practical results?



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EDUCATION

Training for All I/A Judges

Mandatory sessions held in Phoenix and Tucson.
Videos being released.



Educational Sessions

Using every available opportunity to educate the judiciary, the bar, and the public.

Sentencing/determining Ability to Pay

Training on reducing fines/surcharges, determining ability to pay.
Tools for staff.




Additional Tools


Bench cards, spreadsheets and charts.
Incorporation of Clean Election Commission agreement and pending victims fund changes.



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ADDRESS TREATMENT NEEDS



Subcommittee on MH in the justice system report to the Fair Justice Task Force.

Development of a guide for presiding judges to develop protocols for cases involving those with mental illness.


The Sequential Intercept Model is being accepted and training is being developed.

Policy changes

Revised Rule 11 process and successful LJ pilots. SB (2017)


Informational guide for civil commitment process.

New mental health committee to continue to work with issues.



ADDRESS TREATMENT NEEDS

Practical results?





ADDRESS TREATMENT NEEDS

Mental Health in the Criminal Justice System Subcommittee

Legislative and Rule changes for a comprehensive approach



Competency Determination (Rule 11) Workgroup

Template AO for LJ courts to implement competency determinations in criminal cases.

Mental Health Protocols, a Guide for PJs

SJI grant to develop with NCSC.



Mental Health Courts

Performance standards and reporting requirements established for MH Courts in AZ.



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ADDITIONAL EFFORTS



AO 2017-79 Removes the establishment of a “bond schedule”

AO 2017-80 Ease and consistency in financial payments, requires payment plans in all courts

AO Bench Cards for ability to pay at sentencing and OSC

FARE Program Enhancements

- ACJA 5-205 Revisions
 - New Collections Contract
 - Integration of CAP into FARE
 - Changes in collection fees and allocation

Policy changes



ADDITIONAL EFFORTS

Practical results?



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ADDITIONAL EFFORTS

Text/Voice Notification System

Implemented in AJACs Courts



Post Conviction Actions

Legislative changes for set-aside of convictions.

Online Dispute Resolution

Pilots moving forward for small claims, DR, civil traffic



ADC CAP

Phoenix Municipal implementing a targeted Compliance Assistance Program for those inmates being released who have completed training.



18



ADDITIONAL EFFORTS

Clean Election Agreement

Modification to process of reducing fines, assessments and surcharges.



Correctable Violations

Streamlining the process and tying into Online Dispute Resolution process.

Modifications to automated systems and additional tools

Ongoing changes require additional updates.



Suspension of Drivers License

Finding alternative to immediate suspension, testing delay of default in six courts.

SCC - 38.9% reduction in civil traffic defaults
51.9% reduction in FTA warrants

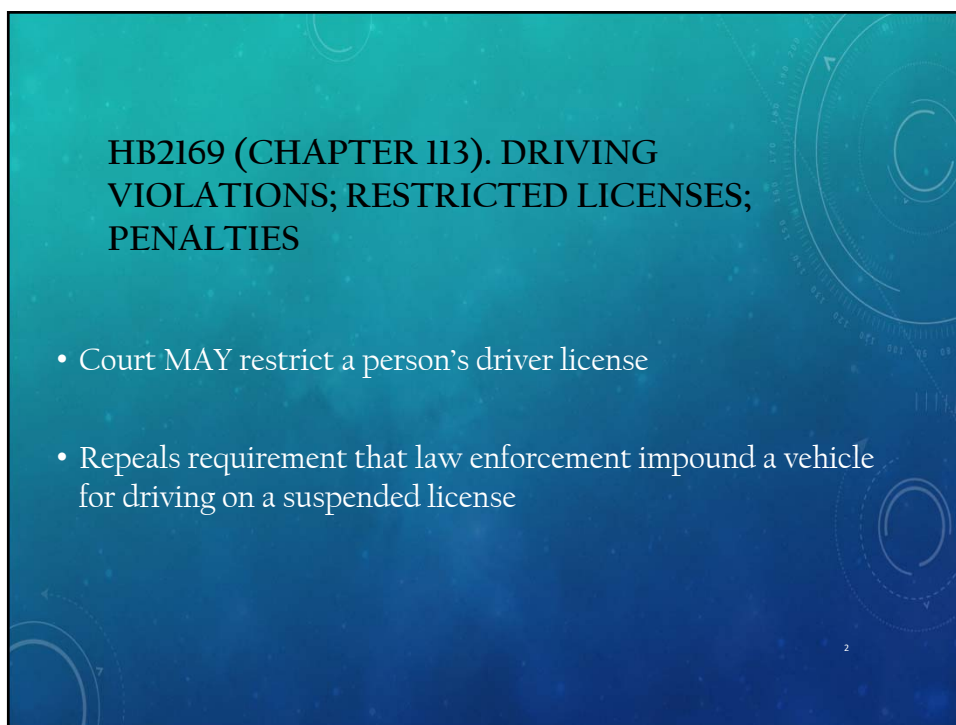


19



“I have always found that mercy bears richer fruit than strict justice.”

—Abraham Lincoln



- HB2169 (CHAPTER 113). DRIVING VIOLATIONS; RESTRICTED LICENSES; PENALTIES**
- Court MAY restrict a person's driver license
 - Repeals requirement that law enforcement impound a vehicle for driving on a suspended license

HB2169 (CHAPTER 113). DRIVING VIOLATIONS; RESTRICTED LICENSES; PENALTIES CONT.

- Reclassifies driving on a suspended license to a civil traffic violation if due to failure to pay or failure to appear on a civil traffic violation
- Permits the court to mitigate a court ordered civil penalty if the payment would cause a hardship

3

HB2312 (CHAPTER 83). SETTING ASIDE CONVICTION; REQUIREMENTS

- Allows a person to apply to the court to have a conviction set aside, exceptions
- Requires the court to inform the person of the application process at the time of sentencing

4

HB2312 (CHAPTER 83). SETTING ASIDE CONVICTION; REQUIREMENTS

- Allows the conviction to be used to prove a prior and by ADOT to enforce its administrative provisions
- Prohibits the clerk of court from charging a fee for an application to set aside a conviction

5

HB2313 (CHAPTER 237). SENTENCING; MONETARY OBLIGATIONS; FINE MITIGATION

- Allows the court to mitigate a fine if the payment would cause a hardship
- Exempts mandatory fines
- Permits mitigation of a surcharge with the exception of the clean elections portion if the fine is mandatory

6

HB2313 (CHAPTER 237). SENTENCING; MONETARY OBLIGATIONS; FINE MITIGATION CONT.

- Expands and limits the option for sentencing a defendant to community restitution in lieu of payment of monetary obligations
- Allows a probationer to be eligible for probation earn time credit if in compliance with nonmonetary obligations
- Reduces the annual interest accruing on a criminal restitution order in favor of the state from 10% to 4%

7

HB2314 (CHAPTER 203). MISDEMEANOR SENTENCE; AUTHORIZED DISPOSITION

Authorizes a court to impose a term of community restitution, education or treatment for a misdemeanor

8

HB2315 (CHAPTER 204). INTENSIVE PROBATION; EMPLOYMENT WAGES; MONITORING

- Repeals antiquated language requiring the probation officer to collect and distribute wages
- Requires a person's probation officer monitor income to ensure compliance with court ordered financial obligations

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Thank you,
Jerry Landau

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SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-17-0015
RULES 4.2, 5.1, 5.4, 7.2, 7.4,)
26.12 and 27.8, RULES OF)
CRIMINAL PROCEDURE) **FILED 09/28/2017**
)
_____)

ORDER

**AMENDING RULES 4.2, 5.1, 5.4, 7.2, AND 7.4, ARIZONA RULES OF
CRIMINAL PROCEDURE**

A petition having been filed proposing to amend Rules 4.2, 5.1, 5.4, 7.2, 7.4, 26.12, and 27.8, Rules of Criminal Procedure, and comments having been received; and Rules 26.12 and 27.8, Arizona Rules of Criminal Procedure, having been amended by the Court on August 31, 2017, effective January 1, 2018; and amendments to Rules 4.2, 5.1, 5.4, 7.2, and 7.4 having been circulated on August 31, 2017 for additional comment by September 25, 2017; and one comment having been received, upon consideration,

IT IS ORDERED that Rules 4.2, 5.1, 5.4, 7.2, and 7.4, Rules of Criminal Procedure, as restyled in R-17-0002, effective January 1, 2018, be amended in accordance with the attachment hereto, effective April 2, 2018.

DATED this 28th day of September, 2017.

/s/
SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

David K Byers

Elizabeth B Ortiz

David J Euchner

William G Montgomery

Kathleen E Brody

Andrea Woods

Michael A Breeze

Mark C Faull

ATTACHMENT*

(*additions to the rules as amended in R-17-0002 are indicated by underscoring;
deletions by ~~strikeouts~~)

Rule 4.2. Initial Appearance

(a) Generally. At an initial appearance, the magistrate must:

- (1) determine the defendant's true name and address and, if necessary, amend the formal charges to correct the name and instruct the person to promptly notify the court of any change of address;
- (2) inform the defendant of the charges and, if available, provide the person with a copy of the complaint, information, or indictment;
- (3) inform the defendant of the right to counsel and the right to remain silent;
- (4) determine whether there is probable cause for purposes of release from custody, and, if no probable cause is found, immediately release the person from custody;
- (5) appoint counsel if the defendant requests and is eligible for appointed counsel under Rule 6;
- (6) permit and consider any victim's oral or written comments concerning the defendant's possible release and conditions of release;
- (7) unless the magistrate determines under (a)(8) that release on bail is prohibited, determine the conditions of release under Rule 7.2(a) including whether the defendant is non-bailable under article 2, section 22 of the Arizona Constitution and A.R.S. § 13-3961;
- (8) determine whether probable cause exists to believe:
 - (A) the defendant committed a capital offense, a sexual assault, or any felony offense committed while the person was on pretrial release for a separate felony charge; or
 - (B) the defendant committed a felony for which release on bail is prohibited because the defendant poses a substantial danger and no conditions of release will reasonably assure the safety of the victim, any other person, or the community based on the considerations provided in Rule 7.2(b)(3);
- (9) if the court determines that the defendant is not eligible for bail based on a determination under (a)(8)(A) or (B), schedule a bail eligibility hearing in superior court as required under Rule 7.2(b)(4);

(810) order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:

(A) the defendant is charged with a felony offense, a violation of A.R.S. §§ 13-1401 et seq. or A.R.S. §§ 28-1301 et seq., or a domestic violence offense as defined in A.R.S. § 13-3601; and

(B) the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number; and

(911) order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing if:

(A) the defendant is in-custody and was arrested for an offense listed in A.R.S. § 13-610(O)(3); and

(B) the court has not received proof of compliance with A.R.S. § 13-610(K).

(b) and (c) [No change]

Rule 5.1. Right to a Preliminary Hearing; Waiver; Continuance

(a) Right to a Preliminary Hearing. A defendant has a right to a preliminary hearing if charged in a complaint with a felony. A preliminary hearing must commence before a magistrate no later than 10 days after the defendant's initial appearance if the defendant is in custody, or no later than 20 days after the defendant's initial appearance if the defendant is not in custody, unless:

(1) the complaint is dismissed;

(2) the hearing is waived;

(3) the defendant has been transferred from the juvenile court for criminal prosecution on specified charges; ~~or~~

(4) the magistrate orders the hearing continued under (c) ~~;~~ or

(5) the court made a probable cause finding at a bail eligibility hearing under Rule 7.2(b)(4).

(b) – (d) [No change]

Rule 5.4. Determining Probable Cause

(a) Holding a Defendant to Answer. If a magistrate finds that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate must file a written order holding the defendant to answer for the offense before the superior court. Upon request, the magistrate may reconsider the conditions of release. This rule's requirements are satisfied if a probable cause finding was made at a bail eligibility hearing under Rule 7.2(b)(4).

(b) - (d) [No change]

Rule 7.2. Right to Release

(a) [No change]

(b) Before Conviction: Defendants Charged with an Offense Not Eligible for Bail/Non-Bailable Offenses. ~~The court must not release a defendant on bail if it finds the defendant is not bailable under applicable law.~~

(1) Not Eligible Based on Commission of a Specified Felony or Any Felony While on Pretrial Release. A defendant must not be released if the court finds the proof is evident or the presumption great that the defendant committed:

(A) a capital offense or a sexual assault; or

(B) any felony offense while the defendant was on pretrial release for a separate felony charge.

(2) Not Eligible Based on Commission of any Felony and Other Factors. Under article 2, section 22(A)(3) of the Arizona Constitution, the court may not release any defendant charged with a felony if the court finds all of the following:

(A) the proof is evident or the presumption great that the defendant committed one or more of the charged felony offenses;

(B) clear and convincing evidence that the defendant poses a substantial danger to the victim, any other person, or the community or, on certification by motion of the state, the defendant engaged in conduct constituting a dangerous crime against children or terrorism; and

(C) no condition or combination of conditions of release will reasonably assure the safety of the victim, any other person, or the community.

(3) Bail Eligibility Considerations. In making the determinations required by (b)(2)(B) and (b)(2)(C), the court must consider:

- (A) the nature and circumstances of the offense charged, including whether the offense is a “dangerous offense” as defined in A.R.S. § 13-105;
- (B) the weight of the evidence against the defendant;
- (C) the history and characteristics of the defendant, including the defendant’s character, physical and mental condition, past conduct including membership in a criminal street gang, history relating to drug or alcohol abuse, and criminal history;
- (D) the nature and seriousness of the danger to the victim, any other person, or the community that would be posed by releasing the defendant on bail, including any threat to a victim or other participants in the judicial process;
- (E) the recommendation of the pretrial services program based on an appropriate risk assessment instrument;
- (F) any victim statement about the offense and release on bail; and
- (G) any other factor relevant to the determination required under (b)(2)(B) and (b)(2)(C).

(4) Bail Eligibility Hearing.

- (A) Generally. The superior court must hold a hearing to determine whether a defendant held in custody under Rule 4.2(a)(8) is not eligible for bail as required under (b)(1) or (b)(2), unless the defendant waives this hearing.
- (B) Timing. If the State makes an oral motion under A.R.S. § 13-3961(E), the court must hold this hearing within 24 hours of the initial appearance, subject to continuances as provided in A.R.S. § 13-3961. If this motion is not made, the hearing must be held as soon as practicable, but no later than 7 days after the initial appearance unless the detained defendant moves for a continuance.
- (C) Determination of Probable Cause and Release Conditions. If the court does not find the proof evident or the presumption great under (b)(1) or (b)(2)(A), the court must determine whether there is probable cause to believe that an offense was committed and that the defendant committed it. If the court finds probable cause, the court must determine release conditions under (a). If the court does not find probable cause, the defendant must be released from custody. The parties may stipulate before the bail eligibility hearing that the probable cause determination at the hearing satisfies the requirements of Rule 5. If the parties so stipulate and the court does not find probable cause, the court must dismiss the complaint and discharge the defendant. If the parties have not so stipulated, the court must schedule a preliminary hearing as provided in Rule 5.1(a).

(D) Findings on the Record. The court's findings must be on the record.

(c) – (d) [No change]

Rule 7.4. Procedure

(a) **Initial Appearance.** At an initial appearance, the court must determine bail eligibility and the conditions for release. If the court decides that the defendant is eligible for release, the court must issue an order containing the conditions of release. The order must inform the defendant of the conditions and possible consequences for violating a condition, and that the court may immediately issue a warrant for the defendant's arrest if there is a violation.

(b) Bail Eligibility Hearing.

(1) Right to Secure Witnesses, Cross-Examine, and Review Witness Statements. At a bail eligibility hearing, each party has the right to secure the attendance of witnesses, cross-examine any witness who testifies, and to review any previous written statement by the witness before cross-examination.

(2) Victims. Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g).

(3) Admissibility. Evidence is admissible at the hearing only if it is material to whether, and under what conditions, to release the defendant on bail and, subject to the parties' stipulation under Rule 7.2(b)(4)(C), whether probable cause exists to hold the defendant for trial on each charge. Rules or objections calling for the exclusion of evidence are inapplicable at a bail eligibility hearing.

(bc) Later Review of Conditions.

(1) **Generally.** On motion or on its own, a court may reexamine bail eligibility or the conditions of release if the case is transferred to a different court or a motion alleges the existence of material facts not previously presented to the court.

(2) **Motion Requirements and Hearing.** The court may modify the conditions of release only after giving the parties an opportunity to respond to the proposed modification. A motion to reexamine the conditions of release must comply with victims' rights requirements provided in Rule 39.

(3) **~~Non-Bailable Offenses~~ Eligibility for Bail.** If the motion is by the State and involves whether the defendant should be held without bail a defendant previously held eligible for bail at the initial appearance, it need not allege new material facts. The court must hold a hearing on the record as soon as practicable, but no later than 7 days after the motion's filing.

(ed) Evidence. A court may base a release determination under this rule on evidence that is not admissible under the Arizona Rules of Evidence.

(e) Defendant's Bail Status. If the court makes the findings required under Rule 7.2(b)(1) or (b)(2) to deny bail, the court must order the defendant held without bail until further order. If not, the court must order the defendant released on bail under Rule 7.2(a).

(df) Review of Conditions of Release for Misdemeanors. No later than 10 days after arraignment, the court must determine whether to amend the conditions of release for any defendant held in custody on bond for a misdemeanor.

(eg) Appointment of Counsel. The court must appoint counsel in any case in which the defendant is eligible for the appointment of counsel under Rule 6.1(b).

David K. Byers, Administrative Director
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Projects2@courts.az.gov

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:)	
)	
PETITION TO AMEND RULES)	Supreme Court No. R-18-_____
26.11, 29, 30 AND 41, ARIZONA)	(expedited consideration
RULES OF CRIMINAL)	requested)
PROCEDURE)	
_____)	

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Rules 26.11, 29, 30 and 41 of the Arizona Rules of Criminal Procedure as proposed in Appendix A. The amendment modifies the rules to conform to changes adopted by Laws 2018, Chapter 83, HB 2312 (“HB 2312), which becomes effective August 3, 2018.

I. Background and Purpose of the Proposed Amended Rules. HB 2312 originated with the Post-Conviction Actions Subcommittee of this Court’s Fair Justice for All Task Force and was approved for filing by the Arizona Judicial Council in October, 2017. The legislature modified the original proposal to some extent, however the amendments to ARS § 13-907 still meet many of the original

objectives of clarifying and simplifying the process of setting aside a judgment of guilt, standardizing the criteria judges are to use in deciding whether to set aside a conviction, providing guidance to those affected by the set aside process and informing the public about the consequences of a set aside.

The subcommittee included judges, probation, prosecutors, defense bar, victim advocates, law enforcement and members of the public with an interest in the set aside process. The subcommittee also took public testimony. After offering recommendations on the statute that went to the Task Force on Fair Justice, AJC and legislature, the subcommittee tackled the applicable rules including the forms.

One modification to the current process made by the HB 2312 is the requirement that the court notify defendant of the right to apply for a set aside at sentencing, rather than upon discharge from probation. Accordingly, petitioner recommends an amendment to Rule 26.11 that lists the duties of the court after pronouncing sentence.

To further clarify and simplify the process for judges, defendants, and their attorneys, prosecutors, law enforcement and the Clerk of Court, the petitioner is proposing that the Court split the rule addressing the set aside process from the process for requesting restoration of civil rights. They are two separate and distinct processes, embodied in different statutes. Accordingly, petitioner proposes new

Rule 30 addressing the restoration process, which mirrors the process for requesting a set aside.

The proposed Rules 29 and 30 picks up some of the current statutory language outlining the set aside and restoration of civil rights process. Neither the legislature nor the subcommittee addressed the substantive law relating to Restoration of Civil Rights. The subcommittee is expected to begin that process at its July meeting. Therefore, while the proposed Rule 30 attempts to address procedural matters and to replicate the process enacted by HB 2313 and the proposed Rule 29, the petitioner does not recommend any change to the law on Restoration of Civil Rights.

Petitioner is proposing, in order to provide guidance to the court and parties, time frames in which to file applicable pleadings and the responsibilities in meeting victims' rights.

The proposed amendments pick up the statutory factors the court must consider in determining whether to grant an application for set aside. The subcommittee felt that considering a number of pro se litigants who might file an application, including these factors in the rule would be beneficial. The proposed Rule 29.6 b and c on denial of the application and subsequent re-application also includes the statutory language.

In addition, petitioner proposes that the court delete the combined application for set aside and for restoration of civil rights Form 21 and adopt separate application forms and order forms for each process. Petitioner requests renumbering of Form 21(a) as Form 21 (application by victim of sex trafficking to vacate a conviction under ARS § 13-907.01), and adoption of the following new forms as shown in Appendix A:

- 31(a) Application to Set Aside Conviction and Restore Gun Rights,
- 31(b) Order Regarding Application to Set Aside Conviction and Restoration of Gun Rights
- 32(a) Application to Restore Civil Rights and Gun Rights
- 32(b) Order Regarding Application to Restore Civil Rights and Gun Rights

II. Preliminary Comments. This petition has not been sent to the court community for pre-filing comments because of its technical nature and due to the short period of time since the bill's enactment.

III. Request for Emergency Adoption. HB 2312 was enacted with an effective date of August 3, 2018. Petitioner therefore requests expedited adoption of the proposed amended rule to conform with the effective date, and with a formal comment period to follow, as permitted by Supreme Court Rule 28(G).

RESPECTFULLY SUBMITTED this 16th day of May, 2018.

By /S/

David K. Byers, Administrative Director

Administrative Office of the Courts

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APPENDIX A

(language to be deleted is shown with ~~strike-through~~, new language is underlined)

Arizona Rules of Criminal Procedure

Rule 26.11. A Court's Duty After Pronouncing Sentence

(a) **Disclosures.** After pronouncing judgment and sentence, the court must:

(1) inform the defendant:

(A) of the right to appeal the judgment, sentence, or both;

(B) of the right to seek post-conviction relief; ~~and~~

(C) that the failure to file a timely notice of appeal or timely notice of post-conviction relief will result in the loss of those rights; and

(D) of the right to apply to have the judgment of conviction set aside.

(2) advise that:

(A) if the defendant is indigent, as defined in Rule 6.1(b), the court will appoint counsel to represent the defendant on appeal; and

(B) if the defendant is unable to pay for certified copies of the record on appeal and a certified transcript, the county will provide them; and

(3) advise that the defendant may waive the right to appellate counsel by filing a written notice no later than 30 days after filing the notice of appeal.

(b) **Written Notice.** The court must provide the defendant with a written notice of the rights set forth in (a) and the procedures the defendant must follow to exercise them. The record must show affirmatively the defendant's receipt of the notice.

Rule 29. ~~Restoring Civil Rights or Vacating~~ Setting Aside a Conviction

Rule 29.1. Grounds; Notice

(a) **Generally.** A person who has completed probation or a sentence may ~~ask to restore civil rights, to withdraw a plea of guilty or no contest, or~~ apply in writing to the court to set aside a

conviction under A.R.S. § 13-907. The ~~probation officer, or the court if there is no probation officer,~~ must provide a person with written notice of this opportunity ~~before the person's absolute discharge~~ at the time of sentencing.

(b) Sex Trafficking Victims. Under A.R.S. § 13-907.01, a sex trafficking victim may ~~request the sentencing~~ apply in writing to the court to vacate the victim's conviction under A.R.S. § 13-3214, or a city or town ordinance that has the same or substantially similar elements, if the offense was committed before July 24, 2014.

Rule 29.2. Application

(a) Contents. An application under this rule must include the applicant's name, address, date of birth, and signature, the offenses for which the applicant was convicted, the place and date of conviction, the sentence imposed, ~~a statement about the status of victim restitution payment and other court-ordered monetary obligations,~~ and the relief the applicant is requesting. The applicant must attach to the application any documents and affidavits required by law and may attach other supporting documents and affidavits.

(b) Place of Filing and Filing Fee. The applicant must file an application with the court ~~specified by law~~ that sentenced the applicant. The ~~court clerk~~ may not charge a fee for filing or docketing an application.

(c) Processing of Application. The court ~~having jurisdiction must process the application.~~ It must send a copy of the application to the applicable prosecuting agency no later than 10 days of filing and, if it concerns a felony conviction, to the Attorney General.

(d) Victim Notification. The victim has the right to be present and be heard at any proceeding in which the defendant has filed an application to have a judgment of conviction set aside. If the victim requested postconviction notice, the prosecuting agency must provide the victim with notice of the defendant's application and of the rights provided to the victim. The prosecuting agency must provide notice to the victim of the opportunity to be heard if the victim requested post-conviction notification.

Rule 29.3. Hearing Date

The court must set a date for hearing the ~~application that is at least 30 days after the application is filed.~~

Rule 29.429.3. State's Response

~~At least 10 days before the hearing,~~ No later than 60 days after the application is filed, the State or victim may file a written response stating ~~any~~ their reasons for opposing the application, if any. The State must send a copy of the response to the applicant's attorney or the applicant if

~~unrepresented. If the State does not oppose the application or does not timely respond, the court may grant the application without a hearing and may enter an order vacating the conviction.~~

Rule 29.4. Reply

The applicant may file a reply but must do so no later than 15 days after the State's response is filed.

Rule 29.5. Hearing

On either party's request or on its own motion, the court may set a hearing. The hearing must be held no later than 120 days after the application's filing unless the court finds good cause for an extension. The prosecuting agency must provide post-conviction victim notice of the hearing date and the right to be heard, if the victim requested notification.

Rule ~~29.5~~29.6. Disposition

(a) Considerations. In determining whether to grant an application, the court must consider the following factors:

- (1) the nature and circumstances of the offense the conviction is based on;
- (2) the applicant's compliance with the conditions of probation, the sentence imposed, and the Department of Corrections' rules or regulations, if applicable;
- (3) any earlier or later convictions;
- (4) the victim's input and the status of victim restitution, if any;
- (5) the time that has elapsed since the completion of the applicant's sentence;
- (6) the applicant's age at the time of conviction; and
- (7) any other factor relevant to the application.

(b) Denial. If the court denies an application, its order must state the reasons for the denial, and must specify any statutory requirement the applicant has not met.

(c) Subsequent Application. If an application is denied, the applicant may file a new application after satisfying all requirements or after resolving any other reason for denial.

(d) Order. The clerk must transmit the order to the applicant, the prosecutor, and the Department of Public Safety.

Rule ~~29.6~~29.7. Special Provisions for Sex Trafficking Victims

- (a) **Confidentiality.** If a court grants an application submitted by a sex trafficking victim, all paper and electronic records of the vacated conviction become confidential. The record may be disclosed upon request to the sex trafficking victim but otherwise may be disclosed only by court order for good cause. The court must order that the pertinent law enforcement agencies and prosecuting agencies make notations in their records that the conviction was vacated and the applicant was a crime victim.
- (b) **~~The Order's Transmission~~ Order.** The clerk must transmit ~~a copy of an~~ the order vacating the conviction of a sex trafficking victim to the arresting agency, the prosecuting agency, the Department of Public Safety, and the ~~victim~~ applicant.

[new] Rule 30. Restoring Civil Rights

Rule 30.1. Grounds; Notice

(a) Automatic Restoration for First Offense. A person who has not previously been convicted of any other felony must automatically be restored any civil rights that were lost or suspended by the conviction, except the right to possess or carry a gun or firearm, if the person:

- (1) completes a term of probation or receives an absolute discharge from imprisonment; and
- (2) pays any fine or restitution imposed.

(b) Second or Subsequent Offense: A person who has been convicted of 2 or more felonies and whose period of probation has been completed or has received an absolute discharge from imprisonment may have any civil rights that were lost or suspended by the conviction restored by the court. A person whose civil rights were lost or suspended by 2 or more felony convictions in a United States District Court may apply to the superior court in the county in which the person now resides to have the person's civil rights restored.

(c) Gun or Firearm Rights. To restore the right to possess or carry a gun or firearm the person must file an application under Rule 30.2. The following persons may not file to restore the right to possess a gun or firearm:

- (1) a person convicted of a dangerous offense under A.R.S. § 13-704;

(2) a person convicted of a serious offense as defined in A.R.S. § 13-706 until 10 years from the date of discharge from probation or from the date of absolute discharge from prison; or

(3) a person convicted of any other felony offense until 2 years from the person's discharge from probation or absolute discharge from prison.

Rule 30.2. Application

(a) Contents. An application under this rule must include the applicant's name, address, date of birth, and signature, the offenses for which the applicant was convicted, the place and date of conviction, the sentence imposed, the status of victim restitution payment and other court-ordered monetary obligations, and the relief the applicant is requesting. The applicant must attach to the application any documents and affidavits required by law and may attach other supporting documents and affidavits.

(b) Place of Filing and Filing Fee. The applicant must file an application with the court that sentenced the applicant. An applicant who was convicted in a United States District Court may apply for restoration of rights in the superior court in the county where the person now resides. The clerk may not charge a fee for filing an application.

(c) Processing of Application. The court must send a copy of the application to the applicable prosecuting agency no later than 10 days of filing.

(d) Victim Notification. The victim has the right to be present and be heard at any proceeding in which the defendant has filed an application to have civil rights restored. If the victim in a state court matter has requested post-conviction notice, the prosecuting agency must provide the victim with notice of the defendant's application and the rights provided to the victim. The prosecuting agency must provide notice to the victim of the opportunity to be heard if the victim requested post-conviction notification.

Rule 30.3. State's Response

Within 60 days after the application is filed, the State may file a written response stating its reasons for opposing the application, if any. The State must send a copy of the response to the applicant's attorney or the applicant if unrepresented.

Rule 30.4. Reply

The applicant may file a reply but must do so no later than 15 days after the State's response is filed.

Rule 30.5. Hearing

On either party's request or on its own, the court may set a hearing. A hearing must be held no later than 120 days after the application's filing, unless the court finds good cause for an extension. The prosecuting agency must provide post-conviction victim notice of the hearing date and the right to be present and heard if the victim requested notification.

Rule 30.6. Disposition

(a) Considerations. The court must consider the following factors:

- (1) the nature and circumstances of the offense the conviction is based on;
- (2) the applicant's compliance with the conditions of probation, the sentence imposed, and the Department of Corrections' rules or regulations, if applicable;
- (3) any earlier or later convictions;
- (4) the victim's input and the status of victim restitution, if any;
- (5) the time that has elapsed since the completion of the applicant's sentence;
- (6) the applicant's age at time of the conviction; and
- (7) any other factor relevant to the application.

(b) Additional Considerations for Applications Filed Under A.R.S. § 13-925. On the petition's filing the court must set a hearing. At the hearing, the person must present psychological or psychiatric evidence in support of the petition. The State must provide the court with the person's criminal history records, if any. The court must receive evidence on and consider the following before granting or denying a petition filed by a prohibited possessor under A.R.S. § 13-925:

- (1) the circumstances that resulted in the person being a prohibited possessor as defined in A.R.S. § 13-3101(A)(7)(a), or subject to 18 U.S.C. § 922(d)(4) or (g)(4);
- (2) the person's record, including the person's mental health record and criminal history record, if any;
- (3) the person's reputation based on character witness statements, testimony, or other character evidence;
- (4) whether the person is a danger to self or others or has persistent, acute, or grave disabilities or whether the circumstances that led to the original order, adjudication, or finding remain in effect;

(5) any change in the person's condition or circumstances that is relevant to the relief sought; and

(6) any other evidence deemed admissible by the court.

(c) Burden of Proof. The petitioner must prove by clear and convincing evidence the following:

(1) the petitioner is not likely to act in a manner that is dangerous to public safety; and

(2) granting the requested relief is not contrary to the public interest.

(d) Court Findings. At the hearing's conclusion, the court must issue findings of fact and conclusions of law.

(e) Denial. If the court denies an application, its order must state the reasons for the denial in writing, including any statutory requirements the applicant has not met.

(f) Subsequent Application. If an application is denied, the defendant may file a new application after satisfying all requirements or after resolving any other reason for denial.

(g) Order. The clerk must transmit the order to the applicant, the prosecutor, and the Department of Public Safety. If the order is a result of an application filed under A.R.S. § 13-925, a copy of the order must be provided to the Supreme Court and the Department of Public Safety. The Supreme Court and the Department of Public Safety must update, correct, modify, or remove the person's record in any database available to the national instant criminal background check system. Within ten court days after receiving the notification from the court, the Department of Public Safety must notify the United States Attorney General that the person no longer falls within the provisions of A.R.S. § 13-3101 (A)(7)(a) or 18 U.S.C. § 922(d)(4) or (g)(4).

**Form 21 Application Upon Discharge to: Restore Civil Rights. Withdraw Guilty
Plea/Vacate Conviction (Set Aside), Restore Gun Rights**

**Petitioner proposes to abrogate this form in its entirety and renumber Form 21(a) as Form
21.**

[new] FORM 31(a). Application to Set Aside Conviction

_____ Court _____ County, Arizona

STATE OF ARIZONA, Plaintiff -vs- _____ Defendant (FIRST, MI, LAST) _____ Date of Birth _____ Applicant is: <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant <input type="checkbox"/> Probation Officer	CASE NUMBER: _____ <p align="center">APPLICATION TO SET ASIDE CONVICTION A.R.S. § 13-907</p> <p align="center">Note: Includes application to restore gun and firearm rights pursuant to A.R.S. § 13- 907(J)</p>
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SECTION I. CONVICTION(S)

A Judgment of Guilt was entered in the _____ Court against me, the defendant, on the _____ day of _____, _____, on the conviction of:

1. Count I: _____
2. Count II: _____
3. Count III: _____
4. Count IV: _____

Additional counts continue on a separate page.

SECTION II. SENTENCE COMPLIANCE

1. I was sentenced to: a term of probation the Department of Corrections
2. I completed the conditions of **probation**. The Probation Department's order discharging me from probation is attached to this application, if available.
3. I have complied with all required terms of the **sentence** (*including all probation, employment, classes, community service, victim restitution or other court ordered monetary obligations, drug/alcohol testing, or other requirements.*)
4. I have not complied with all terms of my sentence. Explain:

5. I received from the Arizona Department of Corrections a Certificate of Absolute Discharge from Imprisonment AND have attached a copy of that Certificate to this application, if available.
6. Have you paid victim restitution in full? Yes No

If not, a set aside of judgment will be denied without a showing of extraordinary circumstances. If you believe you have extraordinary circumstances, explain below. (*Attach documentation you think is relevant for the court's consideration.*)

7. Have you paid all other court-ordered monetary obligations in this case (criminal fines and fees) in full?

Yes No

If not, please explain:

In some circumstances, you may be eligible to apply to the court to mitigate the amount owed or convert monies owed to community restitution.

SECTION III. PRIOR SET ASIDE(S)

1. Have you previously applied to set aside any conviction? Yes No

If so, what was the date of your last application? _____

2. Have you previously been granted a set aside? Yes No

3. Have you previously been denied a set aside? Yes No

SECTION IV. PENDING CASES AND ACTIVE WARRANTS

1. Are there any open criminal cases against you? Yes No

2. Do you have an active warrant? Yes No

If yes to either question above, please explain:

SECTION V. OTHER INFORMATION FOR THE COURT

1. Is there anything you would like the court to consider?

2. Attach any other information you would like the court to consider.

List attached documents:

3. The court may decide on this application without a hearing unless a hearing is requested by you, the prosecutor's office, or the victim. *(Check the box below if you are requesting a hearing.)*

Hearing requested? [] Yes [] No

I understand that this application may be denied if information in this application is found to be inaccurate.

I understand that even if I am granted the right to possess a gun or firearm under Arizona law, it may not give me the right to possess a firearm under federal law.

I declare under penalty of perjury that the information provided in this application and any attachments is true and correct.

Applicant's Name Printed

Applicant's Signature

Address

AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT

I authorize _____ [] Attorney, or [] Probation Officer to petition the

Superior Court in _____ County, to take the above-indicated action.

Date

Defendant's Signature

[new] Form 31(b) Order Regarding Application to Set Aside Conviction and Restore Gun Rights

_____ Court _____ County, Arizona

STATE OF ARIZONA, Plaintiff -vs- _____ Defendant (FIRST, MI, LAST) _____ Date of Birth	CASE NUMBER: _____ <p align="center">ORDER REGARDING APPLICATION TO SET ASIDE CONVICTION AND RESTORATION OF GUN RIGHTS</p> <p align="center">A.R.S. § 13-907</p>
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Based upon the information presented to the Court, **THE COURT FINDS THAT:** (only those items marked)

The prosecutor has received a copy of the Application to Set Aside Conviction.

- The defendant **has met** all statutory requirements for the application; OR
- The defendant **has not met** all statutory requirements for the application.
- The defendant was convicted of a criminal offense not eligible to be set aside due to:
 - a dangerous offense.
 - an offense for which the person is required or ordered by the court to register pursuant to A.R.S. § 13-3821.
 - an offense for which there has been a finding of sexual motivation pursuant to A.R.S. § 13-118.
 - an offense in which the victim is a minor under fifteen years of age.
 - an offense in violation of section 28-3473, any local ordinance relating to stopping, standing, or operation of a vehicle, or title 28, chapter 3, except a violation of section 28-693 or any local ordinance relating to the same subject matter as section 28-693.

IT IS ORDERED:

- GRANTING** the application setting aside the judgment of guilt, dismissing the complaint, information, or indictment, and that the applicant be released from all penalties and disabilities resulting from the conviction **except those imposed by:**
 - a. The **Department of Transportation** pursuant to A.R.S. §§ 28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312, and 28-3319.
 - b. The **Game and Fish Commission** pursuant to A.R.S. §§ 17-314 or 17-340.
- The applicant's right to possess a gun or firearm is also **restored**.

OR

The applicant's right to possess a gun or firearm is **DENIED** due to the applicant's conviction for a serious offense as defined in section 13-706.

DENYING the application to set aside conviction for the following reasons:

The defendant **has not met** all statutory requirements for the application.

The defendant was convicted of a criminal offense **not eligible** for a conviction to be set aside.

Other reasons:

_____.

DATED this _____ day of _____, _____.

Judicial Officer

[new] Form 32(a). Application to Restore Civil Rights and Gun Rights

_____ Court _____ County, Arizona

STATE OF ARIZONA Plaintiff -vs- _____ Defendant (FIRST, MI, LAST) _____ Date of Birth _____ Applicant is: <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant <input type="checkbox"/> Guardian	[CASE/COMPLAINT NO.] _____ APPLICATION UPON DISCHARGE TO: (check all that apply) <input type="checkbox"/> RESTORE CIVIL RIGHTS <input type="checkbox"/> RESTORE GUN RIGHTS A.R.S. §§ 13-905, 13-906, 13-908, 13-909, 13-910, 13-911, and 13-912 <input type="checkbox"/> REQUEST FOR RECONSIDERATION (for applications previously denied) <input type="checkbox"/> Civil Rights <input type="checkbox"/> Gun Rights
---	--

SECTION I. CONVICTION(S)

A Judgment of Guilt was entered against the me, the defendant, on the ____ day of _____, _____, _____, on the conviction of:

1. Count I: _____
2. Count II: _____
3. Count III: _____
4. Count IV: _____

Additional counts continue on a separate page.

SECTION II. STATE CONVICTION (For federal convictions, see SECTION III.)

A Judgment of Guilt was entered against the me in the Superior Court of Arizona in _____ County.

1. The above stated judgment of guilt and conviction for a felony is my first felony conviction in this or any other state and this application is for restoration of right to possess or carry a gun or firearm only.

NOTE: If this is your first felony conviction in this or any other state, any civil rights lost or suspended by the conviction are automatically restored if you completed a term of probation or received an absolute discharge from imprisonment and paid any fine or restitution imposed; however, your right to possess or carry a gun or firearm requires an application under this rule. Refer to **Section VII** of this application.

2. I completed the conditions of probation. The Probation Department's order discharging me from probation is in the court file or attached to this form.

3. I received from the Arizona Department of Corrections a Certificate of Absolute Discharge from Imprisonment on a date two (2) or more years before today's date, AND have attached a copy of Certificate to this petition.
4. I have complied with all required terms of probation (including all employment, classes, community restitution, victim restitution or other court ordered monetary obligations, drug/alcohol testing, or other requirements.)
5. I have not complied with all terms of my sentence. Explain:

SECTION III. FEDERAL CONVICTION (for state convictions, see SECTION II.)

A Judgment of Guilt was entered against the me in United States District Court for the District of _____. On the ____ day of _____, _____:

1. The above stated judgment of guilt and conviction for a felony is my first felony conviction in this or any other state and this application is for restoration of right to possess or carry a gun or firearm only.

NOTE: If this is your first felony conviction in this or any other state, any civil rights lost or suspended by the conviction are automatically restored if you completed a term of probation or received an absolute discharge from imprisonment and paid any fine or restitution imposed; however, your right to possess or carry a gun or firearm requires an application under this rule. Refer to **Section VII** of this application.

2. I was sentenced to and successfully served a term of federal probation, received an Affidavit of Discharge from the judge who discharged me from probation, **AND** have attached a copy to this petition completed the conditions of probation.
3. I was sentenced to and successfully served a federal prison term and received from the Federal Bureau of Prisons a Certificate of Absolute Discharge, or other official documentation provided by the Bureau of Prisons that indicates successful discharge from Imprisonment on a date two (2) or more years before today's date, **AND** I have attached a copy of the Certificate.
4. I have complied with all required terms of probation (including all employment, classes, community restitution, victim restitution or other court ordered monetary obligations, drug/alcohol testing, or other requirements.)
5. I have not complied with all terms of probation. Explain:

SECTION IV. VICTIM RESTITUTION AND COURT ORDERED MONETARY OBLIGATIONS

- 1. Have you paid victim restitution in full? [] Yes [] No

If no, a restoration of rights will be denied without a showing of extraordinary circumstances. If you believe you have extraordinary circumstances explain below. (*Attach documentation you think is relevant for the court's consideration.*)

- 2. Have you paid all other court-ordered monetary obligations in this case (criminal fines and fees) in full? [] Yes [] No

If not, please explain:

In some circumstances you may be eligible to apply to the court to mitigate the amount owed or convert monies owed to community restitution (State offenses only, not for Federal convictions).

SECTION V. PRIOR RESTORATION OF RIGHTS

- 1. Have you previously applied to have your rights restored? [] Yes [] No

If so, what was the date of your last application? _____

- 2. Have you been granted the restoration of your rights previously? [] Yes [] No

- 3. Have you been denied the restoration of your rights previously? [] Yes [] No

SECTION VI. PENDING CASES AND ACTIVE WARRANTS

- 1. Are there any open criminal cases against you? [] Yes [] No

- 2. Do you have an active warrant? [] Yes [] No

If yes to either question above, please explain:

SECTION VII. RESTORATION OF FIREARM RIGHTS

NOTE: Arizona Revised Statutes require: If the person was convicted of an offense which would be a dangerous offense under section 13-704, the person may not file for the restoration of the right to possess or carry a gun or firearm. If the person was convicted of an offense which would be a serious offense as defined in section 13-706, the person may not file for the restoration of the right to possess or carry a gun or firearm for **ten years** from the date of the person's absolute discharge from imprisonment or discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of the right to possess or carry a gun or firearm for **two years** from the date of the person's absolute discharge from imprisonment or discharge from probation.

- 1. I was convicted of a felony offense not listed in A.R.S. §§ 13-704 or 13-706 and it has been **two** years since absolute discharge from imprisonment or probation
- 2. I was convicted of a serious offense as defined in A.R.S. § 13-706 and it has been **ten** years since absolute discharge from imprisonment or probation
- 3. I was convicted of a dangerous offense as defined in A.R.S. § 13-704. (if yes, you are not eligible to file for restoration of the right to possess or carry a gun or firearm.)

If you are requesting that your civil right to possess a gun or firearm be restored, please write your reasons for the request below:

I understand that even if I am granted the right to possess a gun or firearm under Arizona law, it may not give me the right to possess a gun or firearm under federal law.

SECTION VIII. OTHER INFORMATION FOR THE COURT

Is there anything you would like the court to take into consideration?

Attached is other pertinent documentation. List attached documents:

I understand that this application may be denied if information in this application is found to be inaccurate.

Under Oath I swear or affirm, under penalty of perjury, the information provided in this application is to the best of my knowledge true and correct.

Defendant's Name Printed

Defendant's Signature

Address

OR

To the best of my knowledge, the information provided in this application is true and correct.

Attorney's Name Printed

Attorney's Signature

Attorney's Address

AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT

I authorize my Attorney, _____ to petition the Superior Court in _____ County, to take the above-indicated action.

Date

Defendant's Signature

[new] Form 32(b). Order Regarding Application to Restore Civil Rights and Gun Rights

_____ Court _____ County, Arizona

STATE OF ARIZONA, Plaintiff -vs- _____ Defendant (FIRST, MI, LAST) _____ Date of Birth	CASE NUMBER: _____ <p style="text-align: center;">ORDER REGARDING APPLICATION TO RESTORE CIVIL RIGHTS AND/OR RIGHT TO POSSESS OR OWN A GUN OR FIREARM</p>
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Based on the information presented to the Court, **THE COURT FINDS:** (only those items marked)

The prosecutor has received a copy of the Application to Restore Civil Rights and/or Right to Possess or Own A Gun or Firearm.

- The Defendant **has met** all of the statutory requirements for the application to restore civil rights and to possess or own a gun or firearm.
- The Defendant **has not met** all of the statutory requirements for the application to possess or own a gun or firearm including:
 - The Defendant was convicted of a **dangerous** offense as defined in A.R.S. § 13-704.
 - The Defendant was convicted of a **serious** offense as defined in A.R.S. § 13-706 and **less than ten years** have passed from the date of discharge from probation or prison.
 - The Defendant was convicted of any other felony offense and **less than two years** have passed from the date of discharge from probation or prison.

IT IS ORDERED:

- GRANTING the application to restore civil rights **and** right to possess or own a gun or firearm.
- GRANTING the application to restore civil rights **excluding** the right to possess or own a gun or firearm.
- GRANTING the application to restore the right to possess or own a gun or firearm.
- DENYING the application to restore civil rights and right to possess or own a gun or firearm for the following reasons:
 - The applicant **has not met** all statutory requirements for the application (as noted above):
 - Other reasons: _____.

DATED this _____ day of _____, _____.

Judicial Officer