

Post-Conviction Actions Subcommittee

(A subcommittee of the [Fair Justice for All Task Force](#))

Thursday, May 10, 2018; 10:00 a.m. – 2:00 p.m.
Conference Room 101
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Time*	Agenda Items	Presenter
10:00 a.m.	Welcome and opening remarks	<i>Jerry Landau, Chair</i>
10:10 a.m.	Approval of April 12, 2018 Meeting Notes □ ACTION ITEM/VOTING	<i>Jerry Landau</i>
10:15 a.m.	Final review of proposed Set Aside and forms a. Rule 29 – Setting Aside a Conviction b. Set Aside Application - Form 21(b) c. Order □ ACTION ITEM/VOTING	<i>Jerry Landau</i>
11:30 p.m.	Restoration of Rights Workgroup report a. Statutes b. Rule 30 – Restoring Civil Rights c. Application Upon Discharge to Restore Civil Rights - Form 21(c) d. Review and discuss draft legislation to incorporate automatic restoration of rights (except gun rights) □ ACTION ITEM/VOTING	<i>Judge Sam Myers, Workgroup Chair</i> <i>Jeremy Mussman Amy Kalman</i>
12:15 p.m.	Lunch (\$5.00)	
12:45 p.m.	Continue discussion	
1:30 p.m.	Recommendations to Fair Justice for All Task Force Meeting on May 21, 2018	<i>Jerry Landau</i>
1:50 p.m.	Schedule next meeting	<i>Jerry Landau</i>
1:55 p.m.	Good of the Order/Call to the public	<i>Jerry Landau</i>
2:00 p.m.	Adjournment	

Post-Conviction Actions Subcommittee

(A subcommittee of the Fair Justice for All Task Force)

Thursday, April 12, 2018

1:30 – 3:30 p.m.

MEETING NOTES

Welcome and Opening Remarks

- Jerry Landau called the meeting to order at 1:40 p.m.
- Members who were present, either in person or on the phone, introduced themselves.

Approval of January 29, 2018, Meeting Notes

Motion: To approve the notes as presented (Judge Meyers). The motion was seconded (Kurt Altman). **Action:** Passed

Vote: Unanimous

Review of Legislation: HB2312 Setting aside conviction; requirements

Mr. Landau shared an update with members on HB2312. He reported that the bill passed both the House and Senate, was signed by the Governor, and chaptered. Mr. Landau noted the bill was somewhat different than what was recommended by the Subcommittee. This was due to an agreement reached with the sponsor to address only the process issues this session, not substantive law. Mr. Landau noted that although the legislation which was adopted was a compromise, everyone came to the table for discussions and the process was a collaborative effort.

Mr. Landau explained the judicial branch's legislative process and stressed the importance of successfully obtaining changes to the law that addressed the judicial branch's process challenges. To illustrate the sponsor was receptive and genuinely worked with stakeholders on the amended bill, he noted some of the changes adopted this session. For example, legislation included removing the two-year waiting period to apply for a set-aside and eliminating the requirement that Clerks take down online case information.

Discussion:

Amy Kalman pointed out that defendants (i.e., those who have had their rights restored) are still left with no guidance on how to fill out an employment application without exposing themselves to criminal charges. Discussion ensued regarding the omission of language that would have clarified what it means to have a set-aside.

In response to questions, Mr. Landau reminded members that during the Arizona Judicial Council (AJC) review, the AJC discussed the appropriateness of the judicial branch recommending actions regarding the non-disclosure of an arrest or conviction on an employment application. Specifically, the AJC requested that portion of the bill removed from the proposed legislation as it was not for the judicial branch to bring forward. Because of the AJC's decision, Mr. Landau had no authority to address the omitted language with the sponsor during stakeholder meetings. However, he pointed out that the AJC's decision did not prevent another organization from putting the amendment forward to the legislature.

To address Ms. Kalman's concerns, Kurt Altman clarified that he personally discussed all the issues the

Subcommittee raised with the bill's sponsor. He noted that the sponsor understood the position of the Subcommittee, but he simply had a different viewpoint. Consequently, adding a check box to answer whether an individual had their rights restored was a non-starter this legislative session.

How to handle training for attorneys was raised. It was suggested that language should be included on the form to address the concerns raised by Ms. Kalman and Mr. Mussman. Mr. Mussman recommended the following language for consideration on the form, "When filling out job applications if you have a conviction that was set-aside, you need to disclose that you had a conviction. However, you should note the conviction was set-aside."

In closing, Mr. Landau and Mr. Altman both shared their confidence that the legislation went as far as we could go this session and that the sponsor would continue to work with stakeholders this summer on unresolved issues. It was further noted that the work of the Subcommittee would continue after the Fair Justice for All Task Force disbands.

Review of Proposed Set Aside Rule and Forms

(a.) Rule 29: Tom O'Connell walked the members through proposed revisions to Form 21(b), Application to Set Aside Conviction and the Order. Highlights included:

- 29.1 (a) & (b): Strike "ask the court" and added "may apply in writing to the court."
- 29.2 (a) and (b): Throughout the rules, when referring to restitution, need to clarify that it is "victim restitution." Also, agreed to add "and other court ordered monetary obligations."
- 29.2 (b): Changed "court" to "Clerk of Court". Don Jacobson opposed this change due to confusion when applied to limited jurisdiction courts.
- 29.2 (c): Add a hyphen between opted-in.
- Agreed to delete prior 29.3.
- New 29.3: Added "and victim" after the State to the first sentence.
- 29.4: Capitalized the word "State".
- 29.5: The reason for change to 120 days was questioned. It was clarified that if years have passed and the victim has opted-in and state is having difficulty tracking the victim, a short timeline is going to force the state to request an extension. Specifically, 10- 15 days is inadequate for the State to reconstruct the file. Therefore, it was decided to simply build this time into the rule.
- 29.5: Added "and the right to be present and heard" to the second sentence. Restructured the sentence to fit normal drafting conventions.
- 29.6 (a): Added "In determining whether to grant an application," to beginning of sentence.
- 29.6 (c): Deleted "due to the defendant not satisfying all statutory requirements or other stated reason" and changed "defendant" to "applicant".
- 29.6 (d): Deleted "a copy of" from the sentence.
- 29.7 (b): Changed title of section to "Order." Deleted "a copy of an" to read "The clerk must transmit the order vacating..." Changed "victim" to "applicant."

(b.) Application: Tom O'Connell walked the members through proposed revisions to the Application to Set Aside Conviction. Highlights included:

- Section I: Deleted check boxes for misdemeanor or felony as it was deemed unnecessary because the court will have the full file and most defendants will not know how to respond.
- Section II (3): Added "victim" before restitution and "or other court ordered monetary

obligations” after restitution.

- Section II (5): Deleted “It has been at least 2 years since my Absolute Discharge AND”
- Section II (6): Added “victim” before restitution.
- Section II (7): Made change to closing statement to read, “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 (1): Added “any” prior to conviction.
- Section III (2 & 3): Moved “previously” to after you.
- Section IV (1): Deleted “pending cases” and added “criminal cases” after open.
- Section V (1): Changed “take into account” to “consider”.
- Section V (2): Changed sentence to read, “Attach any other information you would like the court to consider.”
- Change “Defendant” to “Applicant’s” in first signature block. After discussion, the consensus was to delete the proposed signature blocks on page 4 and instead use the signature blocks in the current Maricopa Superior Court form.

(c.) Order: Tom O’Connell walked the members through proposed revisions to the Order. Highlights included:

- Deleted (J) from statutory reference in header.
- Under third check box deleted “for a conviction” and added “due to” before semicolon.
- Agreed to add a check box to the list to address section K of the legislation.
 - **ACTION: Tom O’Connell will add appropriate language for review at the next meeting.**
- It was agreed that the “GRANTING” section should proceed the “DENYING” section.
- The following changes were made to the “DENYING” section:
 - Deleted “defendant’s” before application in the lead in check box
 - Deleted “(as noted above)” at end of sentence in second option check box
 - Deleted the check box that read: “The prosecutor objects to the application.” It was noted that this is not a “standard” reason for denial of an application so it should not be a standard response option for a denial. While a prosecutor can object, the court could still grant the application. It was suggested the court could list the prosecutor’s objection as a reason under the “other reasons” section if needed.
 - Deleted “Also, denying the defendant’s application for restoration of gun or firearms rights.” This was added in §13-706. A new check box will be added that addresses this statutory change.
- It was agreed to change “Presiding Judge” to “Judicial Officer” and to delete the check boxes for recipient of copies and the Deputy Clerk signature line.
 - **ACTION: Tom O’Connell will incorporate these additional agreed upon changes and make other appropriate edits to address new statutory language. Updated forms will be reviewed at the next meeting.**

Juvenile Adjudication Set Aside Workgroup Report

Due to time constraints, it was agreed to address this agenda item at the next meeting.

Restoration of Rights Workgroup Report

Due to time constraints, it was agreed to address this agenda item at the next meeting.

Call to the Public

Gitelle Seer, ACLU, addressed the committee during the Call to the Public.

Future Meetings/Next Steps

May 10, 2018 (10:00 a.m. – 2:00 p.m.)

The agenda will include:

- Review and Vote on finalized version of forms
- Juvenile Adjudication Set Aside Workgroup Report
- Restoration of Rights Workgroup Report
- Review and discuss draft legislation to incorporate automatic restoration of rights (except gun rights)
- Finalize all recommendations to the Task Force on Fair Justice for All

Adjournment

The meeting adjourned at approximately 4:00p.m.

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~~ apply in writing to the court ~~to restore civil rights, to withdraw a plea of guilty or no contest, or~~ 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 status of victim~~ restitution payment and other court 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 of Court may not charge a fee for filing or docketing an application.
- (c) **Processing of Application.** ~~The court having jurisdiction must process the application. It~~ The court must send a copy of the application to the applicable prosecuting agency within 10 days of filing ~~and, if it concerns a felony conviction, to the Attorney General.~~ The prosecuting agency must provide notice to the victim of the opportunity to be heard, if the victim opted-in for post-conviction notification.

(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 guilt set aside. If the victim has made a request for postconviction notice, the attorney for the state shall provide the victim with notice of the defendant’s application and of the rights provided to the victim.

~~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 29.43. State’s Response

~~At least 10 days before the hearing,~~ Within 60 days after the application is filed, the State and victim may file a written response stating any 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. ~~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.~~

29.4 Reply

The applicant may file a reply within 15 days of the filing of the state’s response.

Rule 29.5. Hearing

At the request of either party or on the court’s own motion, the court may set a hearing. If the request is granted, a hearing must be held within 120 days after the filing of the application, unless good cause for an extension is found. The prosecuting agency must provide post-conviction victim notification of the hearing date and the right to be heard, if the victim opted in.

Rule 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 that the conviction is based on;

- (2) The applicant's compliance with the conditions of probation, the sentence imposed, and any state department of corrections' rules of regulations, if applicable.
- (3) Any prior or subsequent convictions.
- (4) The victim's input and the status of victim restitution, if any.
- (5) The length of time that has elapsed since the completion of the applicant's sentence.
- (6) The applicant's age at time of the conviction;
- (7) Any other factor that is relevant to the application.

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

(c) Subsequent Application. If an application is denied, the applicant may file a new application upon satisfaction of all requirements or on resolution of 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 29.7. 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.

_____ COURT _____ County, Arizona

STATE OF ARIZONA, Plaintiff -vs- _____ Defendant (FIRST, MI, LAST) Date of Birth: _____ Applicant is: [] Defendant [] Attorney for Defendant [] Probation Officer	CASE NUMBER: _____ APPLICATION TO SET ASIDE CONVICTION A.R.S. § 13-907 Note: Includes application to restore gun and firearm rights pursuant to A.R.S. § 13-907(J)
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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

COURT

COUNTY

STATE OF ARIZONA, Plaintiff -VS-	CASE NUMBER: _____
Defendant (FIRST, MI, LAST)	ORDER REGARDING APPLICATION TO SET ASIDE CONVICTION AND RESTORATION OF GUN AND FIREARM RIGHTS
Date of Birth	

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

WHAT DOES HAVING A CONVICTION SET ASIDE MEAN TO YOU?

If this order has been granted, please note A.R.S. § 13-907

- A conviction that is set aside may be:
 1. Used as a conviction if the conviction would be admissible had it not been set aside.
 2. Alleged as an element of an offense.
 3. Used as a prior conviction.
 4. Pleaded and proved in any subsequent prosecution of the person by this state or any subdivision of this state for any offense.
 5. Used by the department of transportation in enforcing A.R.S. §§ 28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312, and 28-3319 as if the judgment of guilt had not been set aside.
- The clerk of the court must notify the department of public safety if a conviction is set aside. The department of public safety must update the person's criminal history with an annotation that the conviction has been set aside but may not redact or remove any part of the person's record.
- This section **does not** require a law enforcement agency to redact or remove a record or information from the record of a person whose conviction is set aside.

WARNING

If this order has been granted, the defendant is granted the right to possess a gun or firearm under Arizona law. This order may not give the defendant the right to possess a gun or firearm under federal law.

Consult an attorney, if you have further questions.

Rule 30. Restoring Civil Rights ~~or Vacating a Conviction~~

Rule 30.1. Grounds; Notice

(a) Generally. A person who has been convicted of two or more felonies and whose period of probation has been completed or has received an absolute discharge from imprisonment may have any civil rights which were lost or suspended by his conviction restored by the court. A person whose civil rights were lost or suspended by a felony conviction in a United States District Court may apply ~~for restoration of rights by the presiding judge of~~ to the Superior Court in the county in which the person now resides to have the person's civil rights restored.

(b) Limitations and exclusions. ~~The following limitations and exclusions apply~~ The following persons may not file for restoration of the right to possess a firearm:

(1). A person convicted of a dangerous offense under A.R.S. 13-704 ~~may not file for restoration of the right to possess or carry a firearm.~~

(2). A person convicted of a serious offense as defined in A.R.S. 13-706 ~~may not file for restoration of the right to possess or carry a firearm~~ until 10 years from the date of discharge from probation or from the date of absolute discharge from prison.

(3) A person convicted of any other felony offense ~~may not file for restoration of the right to possess or carry a firearm~~ until 2 years from the person's discharge from probation or absolute discharge from prison.

(c) Limited Automatic Restoration for first offenders. ~~Any~~ A person who has not previously been convicted of any other felony shall 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 both: completes a term of probation or receives an absolute discharge from imprisonment and pays any fine or restitution imposed. The person's right to possess or carry a gun or firearm requires an application under this rule.

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, 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 by in the ~~presiding judge of the~~ Superior Court in the county in which the person now resides. The court may not charge a fee for filing or docketing an application.

(c) Processing of Application. The court must send a copy of the application to the applicable prosecuting agency within 10 days of filing. The prosecuting agency must provide notice to the victim of the opportunity to be heard if the victim opted-in for post-conviction notification. (note: which prosecutor gets cases from US district court?) **Note:** The United States Attorney

(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 if guilty set aside. If the victim in a state court matter has made a request for postconviction notice, the attorney for the state shall provide the victim with notice of the defendant's application and the rights provided to the victim.

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 within 15 days of the filing of the state's response.

Rule 30.5. Hearing

At the request of either party or on the court's own motion, the court may set a hearing. If the request is granted, a hearing must be held within 120 days after the filing of the application, unless good cause for an extension is found. The prosecuting agency must

provide post-conviction victim notification of the hearing date and the right to be present and heard if the victim opted-in for post-conviction notification.

Rule 30.6. Disposition

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

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

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

- (1) The circumstances that resulted in the person being a prohibited possessor as defined in section 13-3101, subsection A, paragraph 7, subdivision (a) or subject to 18 United States Code section 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.
- (6) Any other evidence deemed admissible by the court.

The petitioner must prove by clear and convincing evidence both of the following:

- (1) The petitioner is not likely to act in a manner that is dangerous to public safety.
- (2) Granting the requested relief is not contrary to the public interest.

At the conclusion of the hearing, the court must issue findings of fact and conclusions of law.

Note: Do we need to repeat the statute?

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

(d) Subsequent Application. If an application is denied the defendant may file a new application upon satisfaction of all requirements or on resolution of any other reason for denial.

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

If the order is a result of an application filed pursuant to A.R.S. 13-925, a copy of the order must also 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 business 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 United States Code section 922(d)(4) or (g)(4).

<p>STATE OF ARIZONA Plaintiff</p> <p>-vs-</p> <hr/> <p>Defendant (FIRST, MI, LAST)</p> <hr/> <p>Date of Birth _____</p> <p>Applicant is: <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant</p> <p><input type="checkbox"/> Probation Officer <input type="checkbox"/> Guardian</p>	<p>[CASE/COMPLAINT NO.] _____</p> <p>APPLICATION UPON DISCHARGE TO: (check all that apply)</p> <p><input type="checkbox"/> RESTORE CIVIL RIGHTS</p> <p><input type="checkbox"/> RESTORE FIREARM RIGHTS</p> <p><small>A.R.S. §§ 13-905, 13-906, 13-908, 13-909, 13-910, 13-911, 13-912 and 13-925</small></p> <p><input type="checkbox"/> REQUEST FOR RECONSIDERATION (for applications previously denied)</p> <p style="text-align: center;"><input type="checkbox"/> Civil Rights <input type="checkbox"/> Firearm Rights</p>
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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.

(Question: Does this apply to federal first offenses also?)

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.
5. 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.)
6. 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.)*

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-
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/Probation Officer's Name Printed

Attorney/Probation Officer'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

STATE OF ARIZONA, Plaintiff - VS - _____ Defendant (FIRST, MI, LAST) _____ Date of Birth	CASE NUMBER: _____ ORDER REGARDING APPLICATION TO RESTORE <u>CIVIL RIGHTS AND/OR RIGHT TO POSSESS OR OWN FIREARMS</u>
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Based on the information presented to the Court, **THE COURT FINDS:** (only those items marked)

The ~~County Attorney~~ prosecutor has received a copy of the Application to Restore Civil Rights and/or Right to Possess or Own Firearms.

The Defendant **has met** all of the statutory requirements for the application to restore civil rights and to possess or own firearms.

The Defendant **has not met** all of the statutory requirements for the ~~motion~~ application to possess or own firearms 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 ~~THEREFORE~~ ORDERED:

GRANTING the application to restore civil rights and right to possess or own firearms.

GRANTING the application to restore civil rights excluding the right to possess or own firearms.

GRANTING the application to restore the right to possess or own firearms.

DENYING the application to restore civil rights and right to possess or own firearms for the following reasons:

The applicant **has not met** all statutory requirements for the application (as noted above):

Other reasons: _____.

DATED this _____ day of _____, _____.

Presiding Judge