

juvenile court; destruction of records

1 8-349. Destruction of juvenile records; electronic research
2 records

3 A. A person ~~who has been referred to juvenile court~~ WHO IS AT LEAST
4 EIGHTEEN YEARS OF AGE WHO HAS BEEN ADJUDICATED DELINQUENT OR
5 INCORRIGIBLE may apply for destruction of the person's juvenile
6 court RECORD and department of juvenile corrections records IF

7 ~~B. If the records concern a referral or citation that did not~~
8 ~~result in further action or that resulted in diversion, or~~
9 ~~placement in a community based alternative program or an~~ THE
10 RECORDS INVOLVE AN adjudication for an offense other than an
11 offense listed in section 13-501, subsection A or B, or title 28,
12 chapter 4, ~~the person shall file an application with the juvenile~~
13 ~~court and shall serve a copy of the application on the county~~
14 ~~attorney in the county in which the referral was made. The person~~
15 ~~shall certify under oath that all of the following apply:~~ THE COURT
16 SHALL INFORM THE PERSON OF THIS RIGHT IN WRITING AT THE
17 DISPOSITION.

18 B. THE CLERK OF THE COURT SHALL NOT CHARGE A FILING FEE FOR THE
19 APPLICATION.

20 C. THE APPLICANT SHALL STATE THAT:

21 1. The person is at least eighteen years of age.

22 2. THE PERSON IS NO LONGER UNDER THE JURISDICTION OF THE JUVENILE
23 COURT OR THE DEPARTMENT OF JUVENILE CORRECTIONS.

24 ~~2~~ 3. The person has not been convicted of a felony offense.

25 ~~3~~ 4. A criminal charge is not pending.

26 ~~4~~ 5. The person was not adjudicated delinquent for an offense that
27 would be an offense listed in section 13-501, subsection A or B or
28 title 28, chapter 4.

29 6. THE PERSON IS NOT CURRENTLY REQUIRED TO REGISTER PURSUANT TO
30 SECTION 13-3821.

31 ~~5~~ 7. The person has ~~successfully~~ completed ~~all of~~ the terms and
32 conditions of court ordered probation or HAS been discharged from
33 the department of juvenile corrections pursuant to section 41-2820
34 on successful completion of the individualized treatment plan.

35 ~~6~~ 8. All restitution HAS BEEN PAID IN FULL.

36 9. ALL monetary ~~assessments~~ OBLIGATIONS have been paid in full OR
37 THE APPLICANT REQUESTS THE COURT TO FIND GOOD CAUSE TO MODIFY THE
38 OUTSTANDING OBLIGATIONS PURSUANT TO SUBSECTION J.

1 ~~C~~ D. The juvenile court may order the destruction of records
2 under subsection ~~B A of this section~~ if the court finds all of
3 the following:

- 4 1. The person is at least eighteen years of age.
- 5 ~~2.~~ THE PERSON IS NO LONGER UNDER THE JURISDICTION OF THE JUVENILE
6 COURT OR THE DEPARTMENT OF JUVENILE CORRECTIONS.
- 7 ~~2~~ 3. The person has not been convicted of a felony offense
- 8 ~~3~~ 4. A criminal charge is not pending.
- 9 ~~4~~ 5. The person was not adjudicated delinquent for an offense that
10 would be an offense listed in section 13-501, subsection A or B or
11 title 28, chapter 4.
- 12 ~~6.~~ THE PERSON IS NOT CURRENTLY REQUIRED TO REGISTER PURSUANT TO
13 SECTION 13-3821.
- 14 ~~5~~ 7. The person successfully completed ~~all of~~ the terms and
15 conditions of probation or was discharged from the department of
16 juvenile corrections pursuant to section 41-2820 on successful
17 completion of the individualized treatment plan.
- 18 ~~6~~ 8. All restitution ~~and~~ HAS BEEN PAID IN FULL.
- 19 ~~9.~~ EXCEPT AS PROVIDED IN SUBSECTION J, ALL monetary ~~assessments~~
20 OBLIGATIONS have been paid in full.
- 21 ~~7. The destruction of the records is in the interests of justice.~~
22 ~~8 The destruction of the records would further the rehabilitative~~
23 ~~process of the applicant.~~
- 24 ~~D E. If the records concern a referral that resulted in an~~
25 ~~adjudication of delinquency for an offense not subject to~~ A PERSON
26 WHO IS NOT ELIGIBLE TO HAVE THE PERSON'S RECORDS DESTROYED PURSUANT
27 TO subsection ~~B A of this section~~ the person shall file the
28 application with the juvenile court and shall a copy of the
29 application on the county attorney in the county in which the
30 referral was made. ~~The person shall certify under oath that all of~~
31 ~~the following~~ MAY apply TO HAVE THE PERSON'S JUVENILE COURT AND
32 DEPARTMENT OF JUVENILE CORRECTIONS RECORDS DESTROYED PURSUANT TO
33 SUBSECTION G.
- 34 F. THE APPLICANT SHALL STATE THAT:
- 35 1. The person is at least twenty-five years of age.
- 36 2. The person has not been convicted of a felony offense.
- 37 3. A criminal charge is not pending.
- 38 ~~4. The person has successfully completed all of the terms and~~
39 ~~conditions of court ordered probation or been discharged from the~~
40 ~~department of juvenile corrections pursuant to section 41-2820 on~~
41 ~~successful completion of the individualized treatment plan. THE~~

1 PERSON IS NOT CURRENTLY REQUIRED TO REGISTER PURSUANT TO SECTION
2 13-3821.

3 5. All restitution ~~and~~ HAS BEEN PAID IN FULL.

4 6. ALL monetary ~~assessments~~ OBLIGATIONS have been paid in full OR
5 THE APPLICANT REQUESTS THE COURT TO FIND GOOD CAUSE TO MODIFY THE
6 OUTSTANDING OBLIGATIONS PURSUANT TO SUBSECTION J.

7 ~~E G.~~ The juvenile court may order the destruction of records under
8 THIS subsection ~~D of this section~~ if ~~the county attorney does not~~
9 ~~object within ninety days after the date of the notice and~~ the
10 court finds that all of the following apply:

- 11 1. The person is at least twenty-five years of age.
- 12 2. The person has not been convicted of a felony offense.
- 13 3. A criminal charge is not pending.

14 ~~4. The person has successfully completed all of the terms and~~
15 ~~conditions of court ordered probation or been discharged from the~~
16 ~~department of juvenile corrections pursuant to section 41-2820 on~~
17 ~~successful completion of the individualized treatment plan.~~

18 ~~5~~ 4. THE PERSON IS NOT CURRENTLY REQUIRED TO REGISTER PURSUANT TO
19 SECTION 13-3821.

20 5. All restitution ~~and monetary obligations have~~ HAS BEEN PAID IN
21 FULL.

22 ~~6. The destruction of the records would be in the interests of~~
23 ~~justice.~~ EXCEPT AS PROVIDED IN SUBSECTION J, ALL MONETARY
24 OBLIGATIONS HAVE BEEN PAID IN FULL.

25 7. The destruction of the records would further the rehabilitative
26 process of the applicant.

27 H. THE CLERK SHALL TRANSMIT A COPY OF THE APPLICATION TO THE COUNTY
28 ATTORNEY IN THE COUNTY IN WHICH THE REFERRAL WAS MADE.

29 I. THE COUNTY ATTORNEY MAY FILE AN OBJECTION TO THE APPLICATION.

30 J. THE COURT MAY, FOR GOOD CAUSE, MODIFY ANY MONETARY OBLIGATION
31 EXCEPT VICTIM RESTITUTION.

32 ~~F K.~~ The juvenile court and the department of juvenile corrections
33 may store any records for research purposes.

34 L. WITHIN 90 DAYS OF THE PERSON BECOMING 18 YEARS OF AGE AND UPON
35 NOTIFICATION BY THE PROBATION DEPARTMENT, THE JUVENILE COURT, THE
36 CLERK OF THE SUPERIOR COURT, AND THE JUVENILE PROBATION DEPARTMENT
37 SHALL DESTROY RECORDS CONCERNING A REFERRAL OR CITATION THAT DID
38 NOT RESULT IN FURTHER ACTION OR THAT RESULTED IN A SUCCESSFUL
39 COMPLETION OF DIVERSION. THE PROBATION DEPARTMENT SHALL SEND A
40 COPY OF THE NOTICE TO THE DEPARTMENT OF PUBLIC SAFETY CENTRAL STATE
41 REPOSITORY.

1 M. WITHIN SIX MONTHS OF NOTIFICATION BY THE SUPERIOR COURT THAT A
2 PERSON'S JUVENILE DELINQUENCY OR INCORRIGIBILITY RECORDS WERE
3 DESTROYED, THE DEPARTMENT OF CHILD SAFETY SHALL DESTROY ALL COURT,
4 JUVENILE PROBATION, AND ARIZONA DEPARTMENT OF JUVENILE CORRECTIONS
5 RECORDS IN ITS POSSESSION PRODUCED IN THE DELINQUENCY OR
6 INCORRIGIBILITY MATTER.
7 N. FOR THE PURPOSES OF THIS SECTION "SUCCESSFULLY" MEANS, IN THE
8 DISCRETION OF THE COURT, THE PERSON SATISFIED THE CONDITIONS OF
9 PROBATION.

11/29/18
11:37 AM

2019-07: Juvenile court; destruction of records (Post-Conviction Task Force)

Permits a person who has been adjudicated delinquent or incorrigible to apply for destruction of the person's juvenile court and ADJC records, with some exceptions. The court must provide notice to all adjudicated juveniles at the disposition of the right to seek destruction of records. The clerk of court cannot charge a fee for the application and must transmit a copy of it to the county attorney from the county where the referral was made. The county attorney may file an objection to the application.

The juvenile court may order the destruction of records if the court finds the person, based on the application:

- is at least 18 years of age,
- is no longer under the jurisdiction of the juvenile court or ADJC,
- has not been convicted of a felony offense,
- does not have a criminal charge pending,
- was not adjudicated for an offense listed in section 13-501, subsection A or B (filing on a juvenile in criminal court) or Title 28, chapter 4 (DUI),
- is not currently required to register as a sex offender,
- successfully completed the terms and conditions of probation to the satisfaction of the court or was discharged from ADJC on successful completion of an individualized treatment plan,
- paid all restitution owed, and all monetary obligations owed or the court modified the amount owed for good cause.

If a person does not qualify for destruction of records as outlined above, the court may order destruction of the records if the court finds destruction would further the rehabilitative process of the person who, based on the application:

- is at least 25 years of age,
- has not been convicted of a felony offense,
- does not have a criminal charge pending,
- is not currently required to register as a sex offender,
- paid all restitution, and
- paid all monetary obligations, unless good cause exists to modify the obligations.

The court may modify any monetary obligations, except victim restitution, for good cause. The clerk must transmit a copy of the application to the county attorney in the county in which the referral was made. The county attorney may file an objection to the application.

Any records of a referral or citation that did not result in further action or that resulted in a successful completion of diversion must be destroyed by the juvenile court, the clerk of the court and the juvenile probation department within 90 days after the person becomes 18 years of age. Within six months of notification by the superior court that a person's juvenile records were destroyed, the Department of Child Safety must destroy all delinquency court, juvenile probation, and ADJC records in its possession regarding the delinquency matter.

11/29/18

setting aside adjudications; requirements

1
2 8-348. Setting aside adjudication; application; release from
3 disabilities; exceptions

4 A. Except as provided in ~~subsections C and D~~ SUBSECTION I of this
5 section, a person who is at least eighteen years of age who has
6 been adjudicated delinquent or incorrigible and who has fulfilled
7 the conditions of probation and discharge ordered by the court or
8 who is discharged from the department of juvenile corrections
9 pursuant to section 41-2820 on successful completion of the
10 individual treatment plan may apply to the juvenile court to set
11 aside the adjudication. The court ~~or the department of juvenile~~
12 ~~corrections~~ shall inform the person of this right IN WRITING at
13 the ~~time the person is discharged~~ DISPOSITION. THE CLERK OF THE
14 COURT SHALL NOT CHARGE A FILING FEE FOR THE APPLICATION.

15 B. The person ~~or, if authorized in writing,~~ the person's attorney,
16 probation officer or parole officer may apply to set aside the
17 adjudication. ~~A copy of the application shall be served on the~~
18 ~~prosecutor.~~ THE CLERK SHALL TRANSMIT A COPY OF THE APPLICATION TO
19 THE COUNTY ATTORNEY IN THE COUNTY IN WHICH THE REFERRAL WAS MADE.

20 C. THE COURT MAY CONSIDER THE FOLLOWING FACTORS WHEN DETERMINING
21 WHETHER TO SET ASIDE AN ADJUDICATION:

- 22 1. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE UPON WHICH THE
- 23 ADJUDICATION IS BASED.
- 24 2. WHETHER THE PERSON HAS BEEN CONVICTED OF A FELONY OFFENSE.
- 25 3. WHETHER THE PERSON HAS ANY PENDING CRIMINAL CHARGES.
- 26 4. THE VICTIM'S INPUT AND THE STATUS OF VICTIM RESTITUTION OWED BY
- 27 THE PERSON, IF ANY.
- 28 5. ANY OTHER FACTOR THAT IS RELEVANT TO THE APPLICATION.

29 ~~B~~ D. EXCEPT AS PROVIDED BY SUBSECTION F, if the court grants the
30 application, the court shall set aside the adjudication, DISMISS
31 THE PETITION and shall order that the person be released from all
32 penalties and disabilities resulting from the adjudication except
33 those imposed by the department of transportation pursuant to
34 section 28-3304, 28-3306, 28-3307, ~~or~~ 28-3308 OR 28-3319.

35 ~~Regardless of whether the court sets aside the adjudication, the~~
36 ~~adjudication may be used for any purpose as provided in section 8-~~
37 ~~207 or 13-501 and the department of transportation may use the~~
38 ~~adjudication for the purposes of enforcing the provisions of~~
39 ~~section 28-3304, 28-3306, 28-3307 or 28-3308 as if the adjudication~~
40 ~~had not been set aside.~~

1 E. THE COURT MAY, FOR GOOD CAUSE, MODIFY ANY MONETARY OBLIGATION
2 OWED EXCEPT VICTIM RESTITUTION.

3 F. IF AN APPLICATION IS GRANTED, ALL REMAINING UNPAID MONETARY
4 OBLIGATIONS CONTINUE TO BE OWED AND ARE SUBJECT TO ALL REMEDIES
5 PURSUANT TO SECTIONS 8-344 AND 8-345 UNTIL THE MONETARY OBLIGATIONS
6 ARE PAID.

7 G. IF AN APPLICATION IS DENIED THE COURT SHALL STATE ITS REASONS
8 FOR THE DENIAL IN WRITING.

9 H. IF A VICTIM HAS MADE A REQUEST FOR POST ADJUDICATION NOTICE,
10 THE VICTIM HAS THE RIGHT TO BE PRESENT AND BE HEARD AT ANY HEARING
11 ON THE APPLICATION. THE STATE SHALL PROVIDE THE VICTIM WITH NOTICE
12 OF THE APPLICATION AND OF THE RIGHTS PROVIDED TO THE VICTIM IN
13 THIS SECTION.

14 ~~C. A person may not apply to set aside the adjudication if the
15 person either:~~

16 ~~1. Has been convicted of a criminal offense.~~

17 ~~2. Has a criminal charge pending.~~

18 ~~3. Has not successfully completed all of the terms and conditions
19 of probation or been discharged from the department of juvenile
20 corrections pursuant to section 41-2820 on successful completion
21 of the individual treatment plan.~~

22 ~~4. Has not paid in full all restitution and monetary assessments~~

23 **D I.** This section does not apply to a person who was adjudicated
24 delinquent for any of the following:

25 ~~1. An offense involving the infliction of serious physical injury
26 as defined in section 13-105.~~

27 ~~2. An offense involving the use or exhibition of a deadly weapon
28 or dangerous instrument~~ **A DANGEROUS OFFENSE** as defined in section
29 13-105.

30 ~~3~~ **2.** An offense ~~in violation of title 13, chapter 14~~ **FOR WHICH THE**
31 **PERSON IS CURRENTLY REQUIRED TO REGISTER PURSUANT TO SECTION 13-**
32 **3821.**

33 **3.** AN OFFENSE FOR WHICH THERE HAS BEEN A FINDING OF SEXUAL
34 MOTIVATION PURSUANT TO SECTION 13-118.

35 **4.** An offense in violation of section 28-1381, 28-1382 OR 28-1383
36 ~~or 28-3473~~ IF THE OFFENSE CAN BE ALLEGED AS A PRIOR VIOLATION
37 PURSUANT TO TITLE 28, CHAPTER 4.

38 **5.** AN OFFENSE IN VIOLATION OF SECTION 28-3473.

39 ~~5. A civil traffic violation under title 28, chapter 3.~~

11/27/18

10:54 am

2019-06: Setting aside adjudications (Post-Conviction Task Force)

Enumerates criteria the court may consider in determining whether to grant an application to include:

- the nature and circumstances of the offense upon which the adjudication is based,
- whether the applicant was subsequently convicted of a felony offense,
- whether the applicant has any pending criminal charges,
- victim input and the status of restitution owed by the person, if any, and
- any other factor that is relevant to the application.

Allows a person over the age of 18 whose juvenile jurisdiction was extended to seek a set aside of the adjudication. The court must provide notice to all adjudicated juveniles at disposition of the right to seek a set aside. The clerk of court cannot charge a fee for the application and must transmit a copy of the application to the county attorney from the county in which the referral was made.

The court may mitigate any monetary obligations except victim restitution. If the application is granted, all remaining unpaid court ordered monetary obligations continue to be owed and are subject to all remedies until paid. When denying an application, the court must state its reasons in writing.

If a victim has made a request for post adjudication notice, the state must provide notice of the application and of the right to be present and heard at any hearing on the application.

Sets forth exclusions to eligibility for seeking a set aside to prohibit applications from persons adjudicated delinquent for:

- a dangerous offense,
- an offense for which the person is currently required to register as a sex offender,
- an offense for which there has been a finding of sexual motivation pursuant to section ARS13-118.
- DUI if it can be alleged as a prior
- driving on a suspended license

A pupil qualifies for the alternative graduation requirement if the pupil, who is in the 9th grade or higher, experiences one or more circumstance identified in the eligibility criteria listed in section B., 1-3, below.

- A. A qualified pupil shall be required to complete only the core academic courses required for graduation from high school in the areas of English, social studies, mathematics, science, and fine arts, or career and technical education.
- B. Notwithstanding any other law, the State Board of Education shall adjust the minimum number of credits necessary for high school graduation for a pupil who experiences one or more of the following:
 - 1. Homelessness as defined by 42 U.S.C. section 11434(a)(2);
 - 2. Foster care placement and/or out-of-home placement as defined in section 8-501, subsection A, paragraphs 4, 5, or 9;
 - 3. Juvenile court ordered confinement pursuant to section 8-341, subsection A, paragraph 1, subdivisions b, d, or e, section 8-341.01, or section 48-2822.01.
- C. A pupil who qualifies for the alternative graduation requirement shall take all required statewide assessments adopted by the state board pursuant to section 15-741 or 15-741.02.
- D. A pupil who qualifies for the alternative graduation requirement is required to pass only the civics test, if required pursuant to section 15.701.01, subsection A, paragraph 2 unless the pupil is exempt pursuant to section 15.763. The pupil may, but is not required to, fulfill additional locally mandated graduation requirements including, but not limited to, community service, graduation projects, or other locally mandated graduation exams.
- E. A pupil who meets the requirements of subsection B, or the person(s) holding the right to make educational decisions for the pupil, may request qualification for the alternative graduation requirement. A school district or charter school shall establish a uniform process for requesting qualification for the alternative graduation requirement.
- F. When the school district or charter school becomes aware that a pupil may be eligible for the alternative graduation requirement, the school district or charter school shall inform the pupil and the person(s) holding the right to make educational decisions for the pupil, in writing, of the student's eligibility and the qualification process. If the pupil is a foster child, the

school district or charter school shall notify the pupil's assigned Department of Child Safety specialist.

- G. Upon identifying a pupil who may be eligible for the alternative graduation requirement, the school district or charter school shall inform the pupil and the person(s) holding the right to make educational decisions for the pupil, in writing, of the pupil's right to stay in school to complete graduation requirements of the school district or charter school until the pupil reaches the age of 21 pursuant to section 15-821, or the age of 22 for a pupil who qualifies under the Individuals with Disabilities Education Act pursuant to section 15-761.
- H. A school district or charter school is not required to grant a request for the alternative graduation requirement if the school district or charter school finds the pupil is reasonably able to complete the school district or charter school's full graduation requirements by the end of the pupil's fourth year of enrollment in high school. The school district or charter school shall inform the pupil and the person(s) holding the right to make educational decisions for the pupil, in writing, if the graduation requirement adjustment has been granted or denied. Grounds for denial must be provided in writing. A denial does not preclude a pupil from requesting qualification in a subsequent school year.
- I. The school district or charter school shall ensure the following for a pupil who has been granted the alternative graduation requirement:
 - 1. priority placement in classes required for the pupil to graduate under the alternative graduation requirement;
 - 2. timely assistance and advice from counselors or other qualified personnel to improve the pupil's college or career readiness; and
- J. A pupil who is eligible for the alternative graduation requirement and would otherwise be entitled to remain in attendance in high school shall not:
 - 1. be required to accept the alternative graduation requirement;
 - 2. be denied enrollment in courses for which the pupil is otherwise eligible, including courses necessary to attend an institution of higher education.
- K. A school district or charter school shall neither revoke the alternative graduation requirement once it has been granted, nor shall a receiving school

district or charter school revoke the alternative graduation requirement previously granted to a pupil from another school district or charter school upon receiving the pupil due to an educational agency transfer.

- L. A school district or charter school shall not require or request a pupil who is eligible for the alternative graduation requirement to transfer schools in order to qualify for the alternative graduation requirement.
- M. A school district or charter school shall take active steps to identify and inform students who may qualify for the alternative graduation requirement. Information regarding the alternative graduation requirement shall be posted.
- N. An allegation of noncompliance with the requirements of this section may be filed by the pupil and/or the person(s) holding the right to make educational decisions for the pupil, with the school district or charter school.
 - 1. If the school district or charter school finds merit in the allegation, the school district or charter school shall provide a remedy to the affected pupil and come into compliance.
 - 2. An affected pupil not satisfied with the decision of the school district or charter school may appeal the decision to the Arizona Department of Education. If the Arizona Department of Education finds merit in an appeal, a remedy shall be provided to the affected pupil and the Arizona Department of Education shall require compliance by the school district or charter school.
- O. If the school district or charter school denies a pupil's request for the alternative graduation requirement, the pupil and/or the person(s) holding the right to make educational decisions for the pupil, may file an appeal of that denial with the Arizona Department of Education.