

Post-Conviction Actions Task Force Minutes

Tuesday, November 27, 2018

Established by A.O. No. 2018-52

Present: Jerry Landau, Chair; Julie Ahlquist; Kurt Altman; Alex Benezra; Cathy Clarich; Kirstin Flores; Mirisue Galindo; Jeremy Mussman; Aaron Nash; Tom O’Connell; Judge Kathleen Quigley; Lisa Royal; Leonard Ruiz; Judge Keith Russell; Mikel Steinfeld; Kent Volkmer; Kathy Waters

Appearing Telephonically: Colleen Clase, Ryan Glover, Judge John Hudson, Judge Margaret McCullough, Judge Sam Myers, Judge Antonio Riojas

Absent: Will Gaona, Donald Jacobson, Amber Sliwinski

Presenters/Guests: Cheryl Clark, Amy Love, Karen Nielsen, Dea Podysky

Staff: Kathy Sekardi; Susan Pickard and Theresa Barrett, Jennifer Greene

Welcome and Opening Remarks

With a quorum present, Jerry Landau, Chair, called the meeting to order at 10:08 a.m. and welcomed the members. Kathy Sekardi called the roll. Mr. Landau set forth his goal to adopt final recommendations for presentation to the Arizona Judicial Council

Minutes

Mr. Landau presented the minutes of the August 20, 2018, meeting of the Task Force for approval.

Motion: To approve the minutes of the August 20, 2018 meeting by Mikel Steinfeld. **Second:** Lisa Royal **Vote:** Passed unanimously.

Mr. Landau presented the minutes of the October 17, 2018, meeting of the Task Force for approval.

- The straw poll vote regarding A.R.S. 8-349 on page 11 was corrected to read 12-0.

Motion: To approve the minutes of the October 17, 2018 meeting as amended by Mikel Steinfeld. **Second:** Lisa Royal. **Vote:** Passed unanimously.

Final Action on Juvenile Adjudication Set Aside Subcommittee

A.R.S. § 8-348 – Setting Aside Adjudication

Judge Quigley invited subcommittee members in attendance to share additional insight. She described the subcommittee’s discussion regarding whether to recommend the repeal or amendment of §8-348. Citing an abundance of caution, the subcommittee decided not to recommend the repeal of §8-348. Judge Quigley enumerated the recommended amendments.

The Task Force reviewed the proposed legislation by paragraph and made the following changes.

Subsection	Line	Amendment(s)
A.	11	Sentence should read “The court shall inform the person of this right in writing at the disposition.”

Subsection	Line	Amendment(s)
B.	16	Strike “or” after “The person.”
C.		Issue: It was expressed that set aside should not be granted if victim restitution is not paid in full. The consensus of the members was to approve paragraph C.4. as proposed by the subcommittee.
D-H.		No change.
I.	33	I.2. should read “An offense for which the person is currently required to register pursuant to 13-3821.”
	38	Issue: 1.4. DUI priors should not be deleted. The consensus of the members was to remove the strike out and amend I.4. to read, “4. An offense in violation of section 28-1381, 28-1382 or 28-1383 if the offense can be alleged as a prior violation pursuant to title 28, chapter 4.”
	41	Add new I.5. that reads “An offense in violation of section 28-3473.”

Motion: To recommend to AJC §8-348 as amended by Alex Benezra. **Second:** Mikel Steinfeld **Vote:** Passed 20-1-0

A.R.S. § 8-349 – Destruction of juvenile records

Judge Quigley summarized the subcommittee’s discussion regarding remaining with destruction as opposed to sealing juvenile records. The issue with sealing is it creates access to records that were previously unattainable/destroyed. The subcommittee members have agreed to continue to discuss sealing, the benefits to the juvenile, and necessary access protections for possible submission next year. Judge Quigley provided an overview of the subcommittee’s amendments.

Issues noted:

- Destroying records for juveniles who completed diversion.
- Destruction of record, restoration of right to possess a firearm, and age of person when destruction can be requested.

Subsection	Line	Amendment(s)
A.	11	Action Item: The task force suggested that the subcommittee consider limiting the subsections of section 13-501 to A and select part of B.
B.		No change.
C.	24 25	Add periods at the end of list items.
D-E.		No change.
F.	35	The task force discussed the age at which records should be destroyed considering the restoration of right to possess a firearm pursuant to 13-912.01(c) while reflecting upon 13-501A or B felonies but not misdemeanors and contemplating the record retention and destruction schedule for courts of general jurisdiction.

Subsection Line Amendment(s)

Action Item: Amy Love asked to draft and circulate language such as “. . . 22 years of age except that a person cannot apply until age 30 if adjudicated for . . . (with list of specific offenses)”

- G-I. Except a discussion regarding the impact on receipt of monetary obligations when destroying rather than sealing records, no change.
- J 33 Strike “owed by the person.”
- K No change.
- J 38 Change “clerk of the court” to “clerk of the superior court” to further clarify.
- M-N. No change.

Motion: To recommend to AJC §8-349 as amended with language to be developed by Amy Love regarding the age of 30 exception by Jeremy Mussman. **Second:** Kathy Waters **Vote:** Passed unanimously.

Mr. Landau and Judge Quigley thanked all involved with the subcommittee recommendations.

Call to the Public

Mr. Landau made the first call to the public at 12:00 p.m. Cheryl Clark spoke.

Final Action on Automatic Restoration of Civil Rights

After discussing court processes and procedures regarding victim restitution and monetary obligation payments including civil and criminal restitution orders and property liens, the members discussed two versions of proposed amendments to A.R.S. §§ 13-906 through 13-910.

A.R.S. §§ 13-906 to 13-910

The first version, dated 11-20-18 11:34 p.m., contemplates automatic restoration of the rights to vote, hold public office of trust or profit and serve as a juror upon final discharge. The drafter, after discussions with stakeholders, is willing to amend § 13-906(B) to require full payment of victim restitution before automatic restoration of civil rights.

The second version, dated 9-17-18 1:43 a.m., limits automatic restoration of civil rights to a first felony offense, and offers restoration of rights for a second or subsequent conviction on application and at the discretion of the court.

Issues:

- The requirement of victim restitution being paid in full and the impact on those who have been ordered to pay an amount of victim restitution that the person may never be able to pay in full results in disparate treatment of the poor.
- The **consensus** of the members was to move forward with the version dated 11-20-18 11:34 p.m. with requirement of victim restitution be paid in full.
- This is a policy change that may be best brought by other entities.

The members considered three recommendations:

1. Clean up - Recommend that AJC include in the judicial branch legislative package a proposal that maintains the status quo regarding restoration of civil rights and includes clarifying amendments that make the statutes more understandable.

2. Broader/AJC - Recommend that AJC include in the judicial branch legislative package a proposal that includes statutory amendments that would allow for automatic restoration of civil rights in all cases, predicated on: 1. victim restitution being paid in full, and 2. the person having received a final discharge, with the ability of the court to order restoration even if victim restitution is not paid in full.
3. Broader/Coalition - Recommend that AJC work with other entities to recommend that the legislative vote to change the law and allow for automatic restoration of civil rights for all felons.

Straw Poll:

To recommend that only recommendation 1 above be presented to AJC. – Passed 18-2-1

Motion: To recommend that AJC include in the judicial branch legislative package a proposal that includes statutory amendments that would allow for automatic restoration of civil rights in all cases, predicated on: 1. victim restitution being paid in full, and 2. the person having received a final discharge, with the ability of the court to order restoration even if victim restitution is not paid in full.

Vote: Passed 11-9-0

Amendments to the version, dated 11-20-18 11:34 p.m. were completed during the meeting. The members authorized Mr. Landau to make any reorganization or renumbering needed post-meeting.

The **consensus** of the members was that if AJC does not desire to move forward on the automatic restoration, the clean-up version will be offered as an alternative.

Discuss Setting Aside Convictions Where a Case Record Has Been Purged

Cathy Clarich notified the members that the timelines provided in §8-349 for destruction of record, §8-348 adjudication set aside, and those found in the record retention and destruction schedule are in conflict. As members have noted, a judge cannot make an order to set aside a record that does not exist due to destruction or purge practices.

Action Item: Ms. Clarich was asked to present this issue to the members of the Committee on Limited Jurisdiction Courts at their next meeting.

Good of the Order/Call to the Public

Mr. Landau made the second call to the public at 2:45. No comment was made.

Adjournment

The meeting adjourned at 2:50 p.m.

Next Meeting:

The PCA-Juvenile Adjudication Set Aside Subcommittee will meet in late January to address destruction versus sealing, and provisions §13-501. A meeting will be scheduled for the Task Force when the subcommittee is ready to bring further recommendations forward.