

Post-Conviction Actions Task Force Minutes

Tuesday, May 7, 2019

Established by A.O. No. 2018-52

Present: Jerry Landau, Chair; Kurt Altman; Alex Benezra; Cathy Clarich; Kirstin Flores; Judge Craig Jennings; Donald Jacobson; Amy Love; Jeremy Mussman; Judge Sam Myers; Leonard Ruiz; Judge Keith Russell; Mikel Steinfeld; Kent Volkmer; Kathy Waters

Appearing Telephonically: Julie Ahlquist; Colleen Clase; Ryan Glover; Judge Antonio Riojas; Lisa Royal; Amber Sliwinski; Tom Zaworski

Absent: Mirisue Galindo; Tom O'Connell; Judge Kathleen Quigley

Presenters/Guests: Christina Phillis; Cathy Whalen

Staff: Kathy Sekardi; Susan Pickard, 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 announced that he:

- Has requested that Chief Justice Bales extend the term of the Task Force through to the end of the year,
- Will be scheduling 1-2 summer meetings of this body to discuss further statutory changes,
- Shortened the meeting agenda due to the absence of Judge Quigley and Tom O'Connell,
- Will be out-of-the-office for 10 weeks beginning in July.

Minutes

Mr. Landau presented the minutes of the November 27, 2018, meeting of the Task Force for approval.

<p>Motion: Mr. Mussman moved to approve the minutes of the November 27, 2018. Second: Mr. Altman. Vote: Passed unanimously.</p>
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Report on Legislative Session

Action Item: Mr. Landau will send a legislative summary to Ms. Sekardi who will distribute it to members.

Mr. Landau highlighted the changes made by the following chaptered laws.

HB 2055 (compilation of three bills)

A.R.S. § 8-202

- Extends the court's jurisdiction for designating a Class 6 offense as a misdemeanor or a felony.

A.R.S. § 8-348

- Prohibits the clerk of court from charging a filing fee for an application to set aside a juvenile adjudication.
- Requires the clerk of court to transmit application to county attorney.
- Lists factors for the court to consider when deciding whether to set aside an adjudication.
- Adds A.R.S. § 28-3319 as a department of transportation exception to set aside.
- Allows the court to modify monetary obligations except victim restitution for good cause.

Concerns:

- “An offense for which there has been a finding of sexual motivation pursuant to 13-118,” recently added language does not apply to juveniles and should be removed.

A.R.S. § 8-349

- Prohibits the clerk of court from charging a filing fee for an application for destruction of juvenile records.
- Requires the clerk of court to transmit a copy of the application to the county attorney.
- Permits the county attorney to file an objection.
- Allows the court to modify monetary obligations for good cause except victim restitution.
- Requires the court, clerk, and juvenile probation department to destroy records that did not result in further action or resulted in a successful completion of diversion.
- Defines “successfully.”

HB2080

A.R.S § 8-249

- Moves A.R.S. §13-912.01, restoration of civil rights; person adjudicated delinquent, to Title 8.
- Removes “gun or” and uses only “firearm.”

A.R.S. § 13-906

- Defines restoration of civil rights process.
- Requires the court to provide written notice to the defendant regarding restoration of civil rights.
- Requires the clerk of court to notify the department of public safety of the restoration.
- Requires the court to state its reasons for denial in writing.
- If the victim has requested post-conviction notice, the victim has a right to be present and heard at any proceeding regarding the application for restoration.

A.R.S. § 13-907

- Establishes automatic restoration of civil rights for first-time offenders.

A.R.S. § 13-908

- New section that establishes restoration of civil rights by application.

A.R.S. § 13-910

- New section created by section reorganization and renumbering.

Concerns:

- In A.R.S. § 13-907(A) “any” should have been stricken from in the first sentence before “victim restitution that was imposed. . .”

- When restoration of rights has been granted, who notifies the County Recorder, or the Secretary of State?

Action Item: Invite representatives from the Secretary of State and a County Recorder to a future meeting to discuss who notifies these agencies about restoration of rights and what is the procedure.

Action Item: The application's statement, "I understand that even if I am granted the right to possess a firearm under Arizona law, it may not give me the right to possess a firearm under federal law," should be mirrored in the order.

Action Item: Ms. Sliwinski to find a copy of court order containing the above language.

Review of Rule and Forms Due to Passing Legislation

This item was tabled by Mr. Landau who asked members to review the forms provided in the meeting packet as homework.

Discuss Amendments to Set Aside Statute Regarding Title 28 Offenses (Transportation, Game & Fish)

Through discussions with the motor vehicle department, Mr. Landau has secured an agreement to allow a legislative proposal that would remove Title 28 exclusions from the set aside statutes.

Action Item: Add the discussion about removing Title 28 offenses that do not affect ADOT administrative actions from set aside and restoration of rights statutes on future agenda.

Future Meetings

The next meeting of this body will be held on June 25, 26, or 27.

Good of the Order/Call to the Public

Mr. Landau made the call to the public at 11:22 a.m. No comment was made.

Adjournment

The meeting adjourned at 11:24 a.m.