

Post-Conviction Actions Task Force Agenda

Monday, August 20, 2018; 10:00 a.m. – 3:00 p.m.
Conference Room 119 A/B
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007
[Post-Conviction Actions Task Force Home Page](#)

Time*	Agenda Items	Presenter
10:00 a.m.	Welcome and Opening Remarks Approval of Minutes from July 10, 2018 <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Jerry Landau, Chair</i> <i>AOC Government</i> <i>Affairs Director</i>
10:15 a.m.	Review recommendations of the Juvenile Adjudication Set Aside Workgroup <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Judge Kathleen</i> <i>Quigley, Chair</i>
12:30 p.m.	Lunch (\$5.00)	
1:15 p.m.	Other juvenile issues: 1. Continue reviewing recommendations 2. Sealing of diversion files 3. Entering and removal of juvenile adjudications into NICS <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Judge Quigley</i> <i>Jerry Landau</i>
2:30 p.m.	Discuss pending rule change petition re: Criminal Rule 24.3(c)(3) – (Public benefits and victims' rights issues) <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Jennifer Greene</i>
2:45 p.m.	Good of the Order/Call to the public/Next meeting	<i>Jerry Landau</i>
3:00 p.m.	Adjournment	

Next Meeting: September 13, 2018 (10:00 -3:00) | Conference Room 329/330

Post-Conviction Actions Task Force Draft Minutes

Tuesday, July 10, 2018

Established by A.O. No. 2018-52

Present: Jerry Landau, Chair; Kurt Altman; Alex Benezra; Cathy Clarich; Mirisue Galindo; Jeremy Mussman (proxy Joe Cappellini); Aaron Nash; Tom O'Connell; Leonard Ruiz; Judge Keith Russell; Amber Sliwinski; Mikel Steinfeld

Appearing Telephonically: Judge Sam Myers; Judge Antonio Riojas

Absent: Julie Ahlquist; Colleen Clase; Kirstin Flores; Jeremy Ford; Will Gaona; Ryan Glover; Judge John Hudson; Sandra Hunter; Donald Jacobson; Lisa Royal; Kathy Waters

Presenters/Guests: Jennifer Carstens; Judge Kathleen Quigley (telephonic); Art Glenberg

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

Welcome and Introductions

Jerry Landau, Chair, welcomed the members. He briefly discussed Administrative Order (A.O.) 2018-52 that established the Task Force.

Self-introductions were made by all who were in attendance either in person or on the telephone.

Report from the Juvenile Adjudication Set Aside Subcommittee (formerly Workgroup)

The minutes for this portion of the meeting are organized by code section, statute, then instructions and form. Because the discussion moved from item to item and back again, all discussion related to an item is under that item's heading and does not necessarily appear chronologically.

Judge Kathleen Quigley, Juvenile Adjudication Set Aside Subcommittee Chair, presented proposed amendments to A.C.J.A. §3-402; and Arizona Revised Statutes (A.R.S.) §§ 8-348(B), 8-349(D), and 13-912.01; and draft Instructions and an Application to Seal Juvenile Records and Application to Set Aside and Restore Right to Possess a Gun for use statewide.

Action Item: The Task Force members agreed that the Juvenile Adjudication Set Aside Subcommittee should proceed with discussions and develop recommendations regarding presumptive record sealing and set aside.

A.C.J.A. §3-402: Superior Court Records Retention and Disposition Schedule

The proposed code section would amend the length of time that the court must retain a juvenile delinquency record from 25 to 60 years. Keeping the records for 60 years means the record is available to assist the person with explaining juvenile adjudications that can appear in a background check over the course of his or her lifetime.

Comments:

1. Paper records cannot always be protected and may not last 60 years.
2. Electronic records must be migrated to the most recent software and hardware to be maintained.
3. Records Retention Schedules:
 - a. In the Superior Court, criminal case records are permanently maintained.
 - b. In the Limited Jurisdiction Court, depending upon the nature of the offense, the case records are maintained for five to eight years.
4. The Arizona Department of Public Safety maintains criminal history records for 99 years.
5. If a case record has been destroyed and the defendant wants to pay fines, fees and restitution that is owed, there is no case number to which the clerk can apply the funds and no accounting to determine the remaining amount owed. If the record is sealed, this issue does not exist, the accounting remains.
6. What does a court do when an individual applies for a set aside and the court record, paper or electronic, no longer exists?
 - a. This needs to be addressed with those who have record retention expertise.
 - b. The code has been revised two to three times in the last 10 years, the issue has come up each time, but has not been addressed.
7. In California, juvenile records are destroyed at age 35. The juvenile has a right to request possession of the court file in lieu of destruction.
8. Juvenile records are not on public access.

Motion: To accept the proposed amendment to Arizona Code of Judicial Administration §3-402, Record Series Number 15, to retain juvenile delinquency case files for 60 years following the year the case was filed by Aaron Nash. **2nd:** Kurt Altman **Vote:** Passed unanimously.

A.R.S. §8-348: Setting aside adjudication; application; release from disabilities; exceptions

The proposed statute would increase the juvenile court's jurisdiction to 19 years of age in certain situations by adding subsection C.5.

Comments:

1. Another approach to extending the court's jurisdiction, may be to amend the first sentence of subsection A to read ". . . a person who is at least eighteen or at least nineteen years of age if jurisdiction was extended..."
2. Subsection B may need to be amended to mirror A.R.S. §13-907 in relation to the department of transportation.

Action Item: Mr. Landau asked the members to take a close look at the whole of A.R.S. §8-348 and return to the next meeting with suggested amendments, if any.

Motion: To accept A.R.S. §8-348(C)(5) as drafted by Judge Myers. **2nd:** Mikel Steinfeld **Vote:** Passed unanimously.

A.R.S. §8-349: Destruction Sealing of juvenile records; electronic research records

The proposed statute would:

- amend the section title moving from destruction of the record to sealing the record.
- increase the ability of a juvenile to address the record for purposes of clarifying a background check.
- allow a juvenile who did not successfully terminate probation but has turned his or her life around, to apply to the court at age 21 to have his or her record sealed.
- allow reconsideration of restitution owed when the juvenile turns 18 if there are extenuating circumstances.
- limit consideration of fines, fees, and restitution for sealing purposes to those owed by the juvenile.
- within six months of notification by the Superior Court that a person's juvenile record is sealed, the Department of Child Safety shall destroy all delinquency court, juvenile probation, and Department of Juvenile Corrections records produced in the delinquency matter.
- define sealing and limit the request to unseal the record to the person or the person's conservator or guardian.

Comments:

1. Subsection (B)(5):
 - a. Should begin with "All VICTIM restitution" to mirror the adult set aside. The same language should be used in subsection (C)(6).
 - b. The need to have "monetary assessments" paid in full was also removed as a barrier from the adult set aside statute. No objection to removing this language was expressed.
2. A request to seal a case that was diverted will need a separate process. Because when diversion is successful, the records are either maintained by juvenile probation or court administration.

(Continued after lunch)

Additional statutory considerations

Designating an Undesignated Felony as a Class 6 Misdemeanor

The workgroup requested guidance regarding developing a proposed statute that would extend juvenile court jurisdiction beyond age 18 or 19 to address undesignated felonies. Currently once the child turns 18, the court loses jurisdiction and cannot designate the offense as a misdemeanor.

Restoration of civil rights

A.R.S. §13-912.01 can currently be read to include misdemeanor offenses, for which the right to possess a gun or firearm is not lost, except as a requirement of probation. This provision should be limited to persons who were adjudicated delinquent for a felony. The proposal would eliminate subsection A and renumber subsections B and C as A and B. "[F]or a felony offense" would be added to the first sentence of new subsection A after "adjudicated delinquent."

In A.R.S. 13-912-01(C) is a requirement that for certain violations the youth cannot have his or her right to possess a gun or firearm restored until age 30. For adults this is a 10-year waiting period. Question posed to the task force is should the waiting period be the same?

Judicial Officer Training Recommendations

1. Train juvenile court judicial officers:
 - a. to inform juveniles of the loss of a right to possess a gun or firearm during a plea agreement when the youth is admitting to a felony and at disposition,
 - b. about the impact of sentencing a juvenile to the Arizona Department of Juvenile Corrections close in time to his or her 18th birthday,
 - c. to order DPS to remove the juvenile's fingerprints from the criminal history database when a case that was charged in adult court is reverse transferred or dismissed.
2. Develop a form of notice advising of the loss of the right to possess a gun or firearm and about having that right restored.

Overall Comments:

1. In A.R.S. 8-349(B) the required age to apply to have records sealed is 18 or 19, in (D) because a certain offense was charged, the age is 21, and in 13-912-01(C) again because a certain offense was charged, the age to apply is 30. Caution should be taken regarding the differing ages when developing a process for presumptive sealing.
2. Because of the limited impact of a juvenile adjudication as compared with a criminal conviction, the set aside process is almost a non-issue in juvenile, the major issue is sealing the record versus destruction of the record.
3. The inability of the military to access records is an important component and could cost juveniles the ability to enlist in the armed forces.
4. A DUI conviction as a juvenile can tremendously hamper that person's ability to become employed as an adult.

Call to the Public

Before breaking for lunch, Mr. Landau made the first of two calls to the public. No comments were made.

A.O. 2018-52 and A.C.J.A. §1-202

Mr. Landau discussed the Task Force's mandate to further consider setting aside of criminal convictions, restoration of civil rights, and the setting aside and disposition of records of juvenile adjudications, and membership. He urged all members to read A.C.J.A. §1-202 pertaining to public meeting policy.

Report from the Juvenile Adjudication Set Aside Subcommittee (cont.)

A.R.S. §8-349: Destruction Sealing of juvenile records; electronic research records (cont.)

Comments: (cont.)

Action Item: Invite a victim's advocate to provide input at the next meeting.

5. Subsection (C) - Add a list of factors that a judicial officer must consider before ordering a court record sealed.
6. Subsections (D)(1) and (E)(1) - Are there other laws or rules that define why age 21 was used versus age 18?
7. Subsection (E) - "Extenuating circumstances" should be defined. Does this refer to financial hardship or a relative victim asking the court to seal the record or set aside the adjudication?
8. NEW Subsection (F) - The court shall inform the Department of Public Safety when a record is sealed.
9. Subsection (G)
 - a. If the juvenile is no longer on probation and has his or her record sealed, what incentive is left to encourage the continued payment of victim restitution? A juvenile restitution order can be issued and recorded.
 - b. If victim restitution is reduced to a juvenile restitution order, the victim must pay to have it recorded. Can recording fees be waived?

Action Item: Mr. Landau to discuss recording fee waiver with members of the Arizona Association of Counties.

10. Subsection (H)
 - a. The nondisclosure statement is troublesome, "for any purpose" should be replaced with "except as otherwise provided by law."
 - b. When does the ability to not disclose begin, as soon as the record is sealed, or after a specified period?
11. Where does the military search to discover a juvenile record? If they have access to JOLTS can the record in JOLTS be removed when the case is sealed?
12. Subsection (J)
 - a. The members discussed a variety of others (such as the victim, parents, the military and agencies of this state or a political subdivision) who may need access to the sealed record.
 - b. The Department of Public Safety must receive court records directly from the court or an attorney to assist a juvenile with correcting his or her criminal history record. Can the defendant request that the court release a copy of the record to a third-party designee?
 - c. At issue is "obtained" versus "requested" in paragraph 1.
 - d. Add "3. An agency of this state or a political subdivision upon request of the person whose records were sealed." And "4. A third party as the result of a court order requested by the person whose records were sealed."
13. Currently the county attorney can object to the destruction of records until the person is 25 years of age. The amendment is suggesting that the age be changed to 21. The reasoning behind this age should also apply to the sealing of the record unless other entities are permitted to request a court order to unseal the record.
14. Should an age-based tiered approach for sealing a case record under A.R.S. §13-501 be developed?

The discussion was tabled for completion at the next meeting.

Restoration of Civil Rights Workgroup - *Judge Sam Myers, Chair*

Jeff Cappellini discussed automatic restoration of civil rights in the United States reviewing the outcome of a fifty state and District of Columbia survey. Automatic restoration of civil rights has economic and efficiency advantages and can reduce the confusion among election officials caused by improper instructions given to felons.

- Two states do not suspend the right to vote, hold public office, or serve on a jury.
- Seven states do not allow for any type of automatic restoration of rights.
- Fifteen states and the District of Columbia allow for the automatic restoration of all civil rights that are suspended.
- Thirteen states allow for the automatic restoration of voting rights alone.
- Eight states allow for the automatic restoration of the right to vote and hold office, but not the right to serve on a jury.
- Three states allow for the automatic restoration of the right to vote and serve on a jury, but not the right to hold office.
- Arizona and Nevada allow for automatic restoration of civil rights for first-time, non-violent offenders, but require a restoration process thereafter. This is also known as a bifurcated system.

Jennifer Carstens, AOC Extern, shared an informational summary as well.

Comments:

1. Clarity in the statutes is paramount.
2. What does automatic mean? Does the person need proof of restoration?
3. Arizona's bifurcated system is confusing for those seeking restoration. The consistency of all automatic or all upon motion may be problematic but would be less confusing.
4. Clarification is needed regarding the restoration of gun or firearm rights in conjunction with restoring civil rights and set aside.
5. Should rights be separated and addressed individually?
6. From a clerk's perspective, there are definite efficiencies gained when using an automated process with a set number of years after an identified date.
7. Consider nature of the offense (category or chapter) versus number of offenses when limiting automatic restoration.

Mr. Landau outlined the issues that need to be discussed regarding restoration of rights. (e.g. automatic versus upon motion in some or all cases, addressing each right to be restored separately, restoring rights from a conviction in Federal Court.)

The consensus of the members at this time would be to restore all civil rights (excluding gun or firearm rights) automatically.

Discuss A.R.S. § 13-907 and Rule 29 Set Aside - Tom O'Connell, Chair

Mr. O'Connell, reviewed HB 2312 that amended A.R.S. §13-907, Rule 29 regarding set aside and the Application to have a Conviction Set Aside.

Comments:

1. Include a checkbox to indicate that the person is requesting reconsideration of a prior decision regarding a set aside.
2. Clarify that a person can request a hearing, but the court may rule without a hearing.
3. Review the language in Rules 29.5 and 30.5
 - a. Replace "A hearing must be held no later than 120 days after the application's filing, unless the court finds good cause for an extension. With "The court may set a hearing no later than 120 days after the application's filing, unless the court finds good cause for an extension."

Good of the Order/Call to the public

1. Arthur Glenberg, Tempe People Power, made comment during the call to the public.
2. Leonard Ruiz was asked to advise Bill Montgomery of Task Force's objectives and ascertain his interests.
3. With a goal of completing Task Force objectives prior to the October AJC meeting when legislative proposals are considered, Mr. Landau asked the members if it was feasible to add a meeting in August, possibly the 20th or 22nd.
4. Mr. Landau will invite Judges Quigley and McCullough to become Task Force members.
5. Staff was asked to invite the members of the Juvenile Adjudication Set Aside Subcommittee to the next meeting.

Adjournment

The meeting adjourned at 3:01 p.m.

Next Meeting:

Thursday, September 13, 2018
10:00 a.m. to 3:00 p.m.

Supreme Court of Arizona
Administrative Office of the Courts
Court Services Division
1501 West Washington, Suite 410
Phoenix, AZ. 85007

MEMORANDUM

**TO: Presiding Superior Court Judges
Presiding Limited Jurisdiction Court Judges
Clerks of Superior Court
Superior Court Administrators
Limited Jurisdiction Court Administrators
Superior Court Law Librarians**

**FROM: Marcus Reinkensmeyer, Director
Court Services Division**

DATE: July 19, 2018

RE: Notice of Right to Set Aside Conviction

During the fifty-third legislature, second regular session, [HB2312](#) amended A.R.S. §13-907 regarding the setting aside of a conviction. Among the changes to this statute is the requirement that the court inform the convicted person of the right to apply to have the judgment of guilt set aside at the time of sentencing. Previously, this information was provided to the convicted person at the time of discharge from probation or the department of corrections.

Some courts may have notices of this type in a form that is given to the convicted person, while others may include notices in a minute entry. Still other courts may use a version of Rule 41 Rule of Criminal Procedure Form 23. To assist courts in drafting the required notice, the Administrative Office of the Courts suggests the following language:

RIGHT TO APPLY FOR SET ASIDE

(A.R.S. §13-907; Rule 29, Arizona Rules of Criminal Procedure)

On fulfillment of the conditions of probation or sentence and discharge by the court, you may apply to the court where you were sentenced to have the judgment of guilt set aside. Your attorney or probation officer may apply on your behalf.

If you were convicted of multiple offenses, the Court must act on each individual case and each individual count. If you have more than one case number, you must file a separate application for each case number. Note that a conviction for certain offenses cannot be set aside and the granting of an application to set aside a conviction will not affect your driver license record.

The court will not charge a fee for filing an application to set aside a conviction.

The general effective date, August 3, 2018, applies to this statutory amendment.

To support courts, the AOC has a sample form on the judicial branch website that includes the appropriate provision. Each court should review their forms that are provided locally or on their court's website to ensure that they reflect language that conforms to the statutory provisions. If you do not provide these forms, you may wish to offer a link to those available on the statewide website at:

<http://www.azcourts.gov/selfservicecenter/Self-Service-Forms/Criminal-Forms#SetAside>.

Should you have any questions regarding these forms, please contact Susan Pickard at (602) 452-3253 or SPickard@courts.az.gov. Thank you for your prompt attention to this matter.

FOR CLERK'S USE ONLY

_____ COURT

_____ County, Arizona

STATE OF ARIZONA, Plaintiff -vs- _____ Defendant (FIRST, MI, LAST)	[CASE/COMPLAINT NO.]	NOTICE OF RIGHT TO APPLY TO HAVE CONVICTION SET ASIDE
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(A.R.S. §13-907; Rule 29, Arizona Rules of Criminal Procedure)

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If you were convicted of multiple offenses, the Court must act on each individual case and each individual count. If you have more than one case number, you must file a separate application for each case number. Note that a conviction for certain offenses cannot be set aside and the granting of an application to set aside a conviction will not affect your driver license record.

The court will not charge a fee for filing an application to set aside a conviction.

RECEIPT BY DEFENDANT

I have received a copy of this notice explaining my right to apply to have my conviction set-aside and the procedures I must follow to exercise this right.

_____ Date

_____ Defendant

Juvenile court; jurisdiction; undesignated felony

1 Section 1. 8-202. Jurisdiction of juvenile court

2 A. The juvenile court has original jurisdiction over all
3 delinquency proceedings brought under the authority of this title.

4 B. The juvenile court has exclusive original jurisdiction over all
5 proceedings brought under the authority of this title except for
6 delinquency proceedings.

7 C. The juvenile court may consolidate any matter, except that the
8 juvenile court shall not consolidate any of the following:

9 1. A criminal proceeding that is filed in another division of
10 superior court and that involves a child who is subject to the
11 jurisdiction of the juvenile court.

12 2. A delinquency proceeding with any other proceeding that does
13 not involve delinquency, unless the juvenile delinquency
14 adjudication proceeding is not heard at the same time or in the
15 same hearing as a nondelinquency proceeding.

16 D. The juvenile court has jurisdiction of proceedings to:

17 1. Obtain judicial consent to the marriage, employment or
18 enlistment in the armed services of a child, if consent is required
19 by law.

20 2. In an action in which parental rights are terminated pursuant
21 to chapter 4, article 5 or 11 of this title, change the name of a
22 minor child who is the subject of the action. If the minor child
23 who is the subject of the action is twelve years of age or older,
24 the court shall consider the wishes of the child with respect to
25 the name change.

26 3. IN THE CASE OF A PERSON ADJUDICATED DELINQUENT FOR AN
27 UNDESIGNATED CLASS 6 FELONY, DESIGNATE THE OFFENSE AS A
28 MISDEMEANOR, INCLUDING AFTER THE PERSON'S EIGHTEENTH BIRTHDAY OR
29 THE PERSON'S NINETEENTH BIRTHDAY IF JURISDICTION WAS RETAINED
30 PURSUANT TO SUBSECTION H OF THIS SECTION.

31 E. The juvenile court has jurisdiction over both civil traffic
32 violations and offenses listed in section 8-323, subsection B that
33 are committed within the county by persons who are under eighteen
34 years of age unless the presiding judge of the county declines
35 jurisdiction of these cases. The presiding judge of the county may
36 decline jurisdiction of civil traffic violations committed within
37 the county by juveniles if the presiding judge finds that the
38 declination would promote the more efficient use of limited
39 judicial and law enforcement resources located within the county.

1 If the presiding judge declines jurisdiction, juvenile civil
2 traffic violations shall be processed, heard and disposed of in
3 the same manner and with the same penalties as adult civil traffic
4 violations.

5 F. The orders of the juvenile court under the authority of this
6 chapter or chapter 3 or 4 of this title take precedence over any
7 order of any other court of this state except the court of appeals
8 and the supreme court to the extent that they are inconsistent
9 with orders of other courts.

10 G. Except as provided in subsection H of this section, jurisdiction
11 of a child that is obtained by the juvenile court in a proceeding
12 under this chapter or chapter 3 or 4 of this title shall be retained
13 by it, for the purposes of implementing the orders made and filed
14 in that proceeding, until the child becomes eighteen years of age,
15 unless terminated by order of the court before the child's
16 eighteenth birthday.

17 H. If the state files a notice of intent to retain jurisdiction
18 when proceedings are commenced pursuant to section 8-301,
19 paragraph 1 or 2, the court shall retain jurisdiction over a
20 juvenile who is at least seventeen years of age and who has been
21 adjudicated a delinquent juvenile until the juvenile reaches
22 nineteen years of age, unless before the juvenile's nineteenth
23 birthday either:

- 24 1. Jurisdiction is terminated by order of the court.
- 25 2. The juvenile is discharged from the jurisdiction of the 15
26 department of juvenile corrections pursuant to section 41-2820.

27 I. Persons who are under eighteen years of age shall be prosecuted
28 in the same manner as adults if either:

- 29 1. The juvenile court transfers jurisdiction pursuant to section
30 19 8-327. 20
- 31 2. The juvenile is charged as an adult with an offense listed in
32 section 13-501.

33 Section 2. ~~8-341~~. Disposition and commitment; definitions

34 A. After receiving and considering the evidence on the proper
35 disposition of the case, the court may enter judgment as follows:

- 36 1. It may award a delinquent juvenile:
 - 37 (a) To the care of the juvenile's parents, subject to the
38 supervision of a probation department.
 - 39 (b) To a probation department, subject to any conditions the court
40 may impose, including a period of incarceration in a juvenile
41 detention center of not more than one year.

- 1 (c) To a reputable citizen of good moral character, subject to the
- 2 supervision of a probation department.
- 3 (d) To a private agency or institution, subject to the supervision
- 4 of a probation officer.
- 5 (e) To the department of juvenile corrections.
- 6 (f) To maternal or paternal relatives, subject to the supervision
- 7 of a probation department.
- 8 (g) To an appropriate official of a foreign country of which the
- 9 juvenile is a foreign national who is unaccompanied by a parent or
- 10 guardian in this state to remain on unsupervised probation for at
- 11 least one year on the condition that the juvenile cooperate with
- 12 that official.
- 13 2. It may award an incorrigible child:
- 14 (a) To the care of the child's parents, subject to the supervision
- 15 of a probation department.
- 16 (b) To the protective supervision of a probation department,
- 17 subject to any conditions the court may impose.
- 18 (c) To a reputable citizen of good moral character, subject to the
- 19 supervision of a probation department.
- 20 (d) To a public or private agency, subject to the supervision of
- 21 a probation department.
- 22 (e) To maternal or paternal relatives, subject to the supervision
- 23 of a probation department.
- 24 B. If a juvenile is placed on probation pursuant to this section,
- 25 the period of probation may continue until the juvenile's
- 26 eighteenth birthday, except that the term of probation shall not
- 27 exceed one year if all of the following apply:
- 28 1. The juvenile is not charged with a subsequent offense.
- 29 2. The juvenile has not been found in violation of a condition of
- 30 probation.
- 31 3. The court has not made a determination that it is in the best
- 32 interests of the juvenile or the public to require continued
- 33 supervision. The court shall state by minute entry or written
- 34 order its reasons for finding that continued supervision is
- 35 required.
- 36 4. The offense for which the juvenile is placed on probation does
- 37 not involve a dangerous offense as defined in section 13-105.
- 38 5. The offense for which the juvenile is placed on probation does
- 39 not involve a violation of title 13, chapter 14 or 35.1.
- 40 6. Restitution ordered pursuant to section 8-344 has been made.

1 7. The juvenile's parents have not requested that the court
2 continue the juvenile's probation for more than one year.

3 C. If a juvenile is adjudicated as a first time felony juvenile
4 offender, the court shall provide the following written notice to
5 the juvenile:

6 You have been adjudicated a first time felony juvenile
7 offender. You are now on notice that if you are adjudicated of
8 another offense that would be a felony offense if committed by an
9 adult and if you commit the other offense when you are fourteen
10 years of age or older, you will be placed on juvenile intensive
11 probation, which may include home arrest and electronic
12 monitoring, or you may be placed on juvenile intensive probation
13 and may be incarcerated for a period of time in a juvenile
14 detention center, or you may be committed to the department of
15 juvenile corrections or you may be prosecuted as an adult. If you
16 are convicted as an adult of a felony offense and you commit any
17 other offense, you will be prosecuted as an adult.

18 D. If a juvenile is fourteen years of age or older and is
19 adjudicated as a repeat felony juvenile offender, the juvenile
20 court shall place the juvenile on juvenile intensive probation,
21 which may include home arrest and electronic monitoring, may place
22 the juvenile on juvenile intensive probation, which may include
23 incarceration for a period of time in a juvenile detention center,
24 or may commit the juvenile to the department of juvenile
25 corrections pursuant to subsection A, paragraph 1, subdivision (e)
26 of this section for a significant period of time.

27 E. If the juvenile is adjudicated as a repeat felony juvenile
28 offender, the court shall provide the following written notice to
29 the juvenile:

30 You have been adjudicated a repeat felony juvenile offender. You
31 are now on notice that if you are arrested for another offense
32 that would be a felony offense if committed by an adult and if you
33 commit the other offense when you are fifteen years of age or
34 older, you will be tried as an adult in the criminal division of
35 the superior court. If you commit the other offense when you are
36 fourteen years of age or older, you may be tried as an adult in
37 the criminal division of the superior court. If you are convicted
38 as an adult, you will be sentenced to a term of incarceration. If
39 you are convicted as an adult of a felony offense and you commit
40 any other offense, you will be prosecuted as an adult.

1 F. The failure or inability of the court to provide the notices
2 required under subsections C and E of this section does not
3 preclude the use of the prior adjudications for any purpose
4 otherwise permitted.

5 G. Except as provided in subsection S of this section, after
6 considering the nature of the offense and the age, physical and
7 mental condition and earning capacity of the juvenile, the court
8 shall order the juvenile to pay a reasonable monetary assessment
9 if the court determines that an assessment is in aid of
10 rehabilitation. If the director of the department of juvenile
11 corrections determines that enforcement of an order for monetary
12 assessment as a term and condition of conditional liberty is not
13 cost-effective, the director may require the youth to perform an
14 equivalent amount of community restitution in lieu of the payment
15 ordered as a condition of conditional liberty.

16 H. If a child is adjudicated incorrigible, the court may impose a
17 monetary assessment on the child of not more than one hundred fifty
18 dollars.

19 I. A juvenile who is charged with unlawful purchase, possession or
20 consumption of spirituous liquor is subject to section 8-323. The
21 monetary assessment for a conviction of unlawful purchase,
22 possession or consumption of spirituous liquor by a juvenile shall
23 not exceed five hundred dollars. The court of competent
24 jurisdiction may order a monetary assessment or equivalent
25 community restitution.

26 J. The court shall require the monetary assessment imposed under
27 subsection G or H of this section on a juvenile who is not committed
28 to the department of juvenile corrections to be satisfied in one
29 or both of the following forms:

30 1. Monetary reimbursement by the juvenile in a lump sum or
31 installment payments through the clerk of the superior court for
32 appropriate distribution.

33 2. A program of work, not in conflict with regular schooling, to
34 repair damage to the victim's property, to provide community
35 restitution or to provide the juvenile with a job for wages. The
36 court order for restitution or monetary assessment shall specify,
37 according to the dispositional program, the amount of
38 reimbursement and the portion of wages of either existing or
39 provided work that is to be credited toward satisfaction of the
40 restitution or assessment, or the nature of the work to be
41 performed and the number of hours to be spent working. The number

1 of hours to be spent working shall be set by the court based on
2 the severity of the offense but shall not be less than sixteen
3 hours.

4 K. If a juvenile is committed to the department of juvenile
5 corrections, the court shall specify the amount of the monetary
6 assessment imposed pursuant to subsection G or H of this section.

7 L. After considering the length of stay guidelines developed
8 pursuant to section 41-2816, subsection C, the court may set forth
9 in the order of commitment the minimum period during which the
10 juvenile shall remain in secure care while in the custody of the
11 department of juvenile corrections. When the court awards a
12 juvenile to the department of juvenile corrections or an
13 institution or agency, it shall transmit with the order of
14 commitment copies of a diagnostic psychological evaluation and
15 educational assessment if one has been administered, copies of the
16 case report, all other psychological and medical reports,
17 restitution orders, any request for postadjudication notice that
18 has been submitted by a victim and any other documents or records
19 pertaining to the case requested by the department of juvenile
20 corrections or an institution or agency. The department shall not
21 release a juvenile from secure care before the juvenile completes
22 the length of stay determined by the court in the commitment order
23 unless the county attorney in the county from which the juvenile
24 was committed requests the committing court to reduce the length
25 of stay. The department may temporarily escort the juvenile from
26 secure care pursuant to section 41-2804, may release the juvenile
27 from secure care without a further court order after the juvenile
28 completes the length of stay determined by the court or may retain
29 the juvenile in secure care for any period subsequent to the
30 completion of the length of stay in accordance with the law.

31 M. Written notice of the release of any juvenile pursuant to
32 subsection L of this section shall be made to any victim requesting
33 notice, the juvenile court that committed the juvenile and the
34 county attorney of the county from which the juvenile was
35 committed.

36 N. Notwithstanding any law to the contrary, if a person is under
37 the supervision of the court as an adjudicated delinquent juvenile
38 at the time the person reaches eighteen years of age, treatment
39 services may be provided until the person reaches twenty-one years
40 of age if the court, the person and the state agree to the provision
41 of the treatment and a motion to transfer the person pursuant to

1 section 8-327 has not been filed or has been withdrawn. The court
2 may terminate the provision of treatment services after the person
3 reaches eighteen years of age if the court determines that any of
4 the following applies:

- 5 1. The person is not progressing toward treatment goals.
- 6 2. The person terminates treatment.
- 7 3. The person commits a new offense after reaching eighteen years
8 of age.
- 9 4. Continued treatment is not required or is not in the best
10 interests of the state or the person.

11 O. On the request of a victim of an act that may have involved
12 significant exposure as defined in section 13-1415 or that if
13 committed by an adult would be a sexual offense, the prosecuting
14 attorney shall petition the adjudicating court to require that the
15 juvenile be tested for the presence of the human immunodeficiency
16 virus. If the victim is a minor the prosecuting attorney shall
17 file this petition at the request of the victim's parent or
18 guardian. If the act committed against a victim is an act that if
19 committed by an adult would be a sexual offense or the court
20 determines that sufficient evidence exists to indicate that
21 significant exposure occurred, it shall order the department of
22 juvenile corrections or the department of health services to test
23 the juvenile pursuant to section 13-1415. Notwithstanding any law
24 to the contrary, the department of juvenile corrections and the
25 department of health services shall release the test results only
26 to the victim, the delinquent juvenile, the delinquent juvenile's
27 parent or guardian and a minor victim's parent or guardian and
28 shall counsel them regarding the meaning and health implications
29 of the results.

30 P. If a juvenile has been adjudicated delinquent for an offense
31 that if committed by an adult would be an offense listed in section
32 41-1750, subsection C, the court shall provide the department of
33 public safety Arizona automated fingerprint identification system
34 established in section 41-2411 with the juvenile's ten-print
35 fingerprints, personal identification data and other pertinent
36 information. If a juvenile has been committed to the department
37 of juvenile corrections the department shall provide the
38 fingerprints and information required by this subsection to the
39 Arizona automated fingerprint identification system. If the
40 juvenile's fingerprints and information have been previously

1 submitted to the Arizona automated fingerprint identification
2 system the information is not required to be resubmitted.

3 Q. Access to fingerprint records submitted pursuant to subsection
4 P of this section shall be limited to the administration of
5 criminal justice as defined in section 41-1750. Dissemination of
6 fingerprint information shall be limited to the name of the
7 juvenile, juvenile case number, date of adjudication and court of
8 adjudication.

9 ~~R. If a juvenile is adjudicated delinquent for an offense that if
10 committed by an adult would be a misdemeanor, the court may
11 prohibit the juvenile from carrying or possessing a firearm while
12 the juvenile is under the jurisdiction of the department of
13 juvenile corrections or the juvenile court.~~

14 **S R.** If a juvenile is adjudicated delinquent for a violation of
15 section 13-1602, subsection A, paragraph 5, the court shall order
16 the juvenile to pay a fine of at least three hundred dollars but
17 not more than one thousand dollars. Any restitution ordered shall
18 be paid in accordance with section 13-809, subsection A. The court
19 may order the juvenile to perform community restitution in lieu of
20 the payment for all or part of the fine if it is in the best
21 interests of the juvenile. The amount of community restitution
22 shall be equivalent to the amount of the fine by crediting any
23 service performed at a rate of ten dollars per hour. If the
24 juvenile is convicted of a second or subsequent violation of
25 section 13-1602, subsection A, paragraph 5 and is ordered to
26 perform community restitution, the court may order the parent or
27 guardian of the juvenile to assist the juvenile in the performance
28 of the community restitution if both of the following apply:

29 1. The parent or guardian had knowledge that the juvenile intended
30 to engage in or was engaging in the conduct that gave rise to the
31 violation.

32 2. The parent or guardian knowingly provided the juvenile with the
33 means to engage in the conduct that gave rise to the violation.

34 **F S.** If a juvenile is adjudicated delinquent for an offense
35 involving the purchase, possession or consumption of spirituous
36 liquor or a violation of title 13, chapter 34 and is placed on
37 juvenile probation, the court may order the juvenile to submit to
38 random drug and alcohol testing at least two times per week as a
39 condition of probation.

40 **U T.** A juvenile who is adjudicated delinquent for an offense
41 involving the purchase, possession or consumption of spirituous

1 liquor or a violation of title 13, chapter 34, who is placed on
2 juvenile probation and who is found to have consumed any spirituous
3 liquor or to have used any drug listed in section 13-3401 while on
4 probation is in violation of the juvenile's probation. If a
5 juvenile commits a third or subsequent violation of a condition of
6 probation as prescribed by this subsection, the juvenile shall be
7 brought before the juvenile court and, if the allegations are
8 proven, the court shall either revoke probation and hold a
9 disposition hearing pursuant to this section or select additional
10 conditions of probation as it deems necessary, including
11 detention, global position system monitoring, additional alcohol
12 or drug treatment, community restitution, additional drug or
13 alcohol testing or a monetary assessment.

14 **¶ U.** For the purposes of this section:

15 1. "First time felony juvenile offender" means a juvenile who is
16 adjudicated delinquent for an offense that would be a felony
17 offense if committed by an adult.

18 2. "Repeat felony juvenile offender" means a juvenile to whom both
19 of the following apply:

20 (a) Is adjudicated delinquent for an offense that would be a felony
21 offense if committed by an adult.

22 (b) Previously has been adjudicated a first time felony juvenile
23 offender.

24 3. "Sexual offense" means oral sexual contact, sexual contact or
25 sexual intercourse as defined in section 13-1401.

26 **Section 3. 8-348. Setting aside adjudication; application; release**
27 **from disabilities; exceptions**

28 A. Except as provided in subsections C and D of this section, a
29 person who is at least eighteen years of age, **OR NINETEEN YEARS OF**
30 **AGE IF JURISDICTION IS EXTENDED PURSUANT TO SECTION 8-202**, who has
31 been adjudicated delinquent or incorrigible and who has fulfilled
32 the conditions of probation and discharge ordered by the court or
33 who is discharged from the department of juvenile corrections
34 pursuant to section 41-2820 on successful completion of the
35 individual treatment plan may apply to the juvenile court to set
36 aside the adjudication. The court ~~or the department of juvenile~~
37 ~~corrections~~ shall inform the person of this right **IN WRITING** at
38 the time ~~the person is discharged~~ **OF THE DISPOSITION**.

39 B. The person or, ~~if authorized in writing~~, the person's attorney,
40 probation officer or parole officer may apply to set aside the
41 adjudication. A copy of the application shall be served on the

1 prosecutor. THE CLERK OF THE COURT MAY NOT CHARGE A FILING FEE FOR
2 AN APPLICATION TO HAVE AN ADJUDICATION SET ASIDE.

3 C. THE COURT SHALL CONSIDER THE FOLLOWING FACTORS WHEN DETERMINING
4 WHETHER TO SET ASIDE AN ADJUDICATION:

5 1. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE UPON WHICH THE
6 ADJUDICATION IS BASED.

7 2. THE APPLICANT'S COMPLIANCE WITH THE CONDITIONS OF PROBATION OR
8 PAROLE, THE SENTENCE IMPOSED AND ANY STATE DEPARTMENT OF JUVENILE
9 CORRECTIONS RULES OR REGULATIONS, IF APPLICABLE.

10 3. ANY PRIOR OR SUBSEQUENT ADJUDICATIONS OR CONVICTIONS.

11 4. THE VICTIM'S INPUT AND THE STATUS OF VICTIM RESTITUTION, IF
12 ANY.

13 5. ANY OTHER FACTOR THAT IS RELEVANT TO THE APPLICATION.

14 B D. If the court grants the application, the court shall set aside
15 the adjudication, DISMISS THE PETITION and shall order that the
16 person be released from all penalties and disabilities resulting
17 from the adjudication except:

18 1. Those imposed by the department of transportation pursuant to
19 section 28-3304, 28-3306, 28-3307, ~~or~~ 28-3308 OR 28-3319.

20 2. THE GAME AND FISH COMMISSION PURSUANT TO SECTION 17-314 OR 17-
21 340.

22 ~~Regardless of whether the court sets aside the adjudication, the~~
23 ~~adjudication may be used for any purpose as provided in section 8-~~
24 ~~207 or 13-501 and the department of transportation may use the~~
25 ~~adjudication for the purposes of enforcing the provisions of~~
26 ~~section 28-3304, 28-3306, 28-3307 or 28-3308 as if the adjudication~~
27 ~~had not been set aside.~~

28 E. A CONVICTION THAT IS SET ASIDE MAY BE:

29 1. ALLEGED AS AN ELEMENT OF AN OFFENSE.

30 2. CONSIDERED BY THE COURT AND THE PROBATION DEPARTMENT AS PART OF
31 A PRESENTENCE REPORT.

32 3. USED BY THE DEPARTMENT OF TRANSPORTATION IN ENFORCING SECTION
33 28-3304, 28-3305, 28-3306, 28-3307, 28-3308, OR 28-3319 AS IF THE
34 ADJUDICATION HAD NOT BEEN SET ASIDE.

35 F. THE CLERK OF THE COURT MUST NOTIFY THE DEPARTMENT OF PUBLIC
36 SAFETY IF AN ADJUDICATION IS SET ASIDE. THE DEPARTMENT OF PUBLIC
37 SAFETY MUST UPDATE THE PERSON'S CRIMINAL HISTORY WITH AN ANNOTATION
38 THAT THE ADJUDICATION HAS BEEN SET ASIDE BUT MAY NOT REDACT OR
39 REMOVE ANY PART OF THE PERSON'S RECORD.

1 G. THIS SECTION DOES NOT REQUIRE A LAW ENFORCEMENT AGENCY TO REDACT
2 OR REMOVE A RECORD OR INFORMATION FROM THE RECORD OF A PERSON WHOSE
3 ADJUDICATION IS SET ASIDE.

4 H. IF THE COURT DENIES AN APPLICATION TO HAVE AN ADJUDICATION SET
5 ASIDE, THE COURT SHALL STATE ITS REASONS FOR THE DENIAL IN WRITING
6 AND ON THE RECORD.

7 I. A VICTIM HAS THE RIGHT TO BE PRESENT AND BE HEARD AT ANY
8 PROCEEDING IN WHICH THE JUVENILE HAS FILED AN APPLICATION TO HAVE
9 AN ADJUDICATION SET ASIDE PURSUANT TO THIS SECTION. IF THE VICTIM
10 HAS MADE A REQUEST FOR POST ADJUDICATION NOTICE, THE ATTORNEY FOR
11 THE STATE SHALL PROVIDE THE VICTIM WITH NOTICE OF THE JUVENILE'S
12 APPLICATION AND OF THE RIGHTS PROVIDED TO THE VICTIM IN THIS
13 SECTION.

14 ~~E~~ J. 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 3. Has not paid in full all VICTIM restitution ~~and monetary assessments~~
23 OR THE COURT FINDS, AFTER CONSIDERING VICTIM INPUT, THAT
24 EXTENUATING CIRCUMSTANCES EXIST, AND SETTING ASIDE THE
25 ADJUDICATION IS IN THE INTERESTS OF JUSTICE. THE COURT SHALL NOT
26 CONSIDER OTHER OUTSTANDING MONETARY OBLIGATIONS WHEN DETERMINING
27 WHETHER TO SET ASIDE THE ADJUDICATION. IN DETERMINING WHETHER
28 EXTENUATING CIRCUMSTANCES EXIST THE COURT MAY CONSIDER WHETHER THE
29 PERSON IS SEEKING, OBTAINING OR MAINTAINING EMPLOYMENT IF LEGALLY
30 PERMITTED TO DO SO OR IS ATTENDING SCHOOL, THE PERSON'S MEDICAL
31 CONDITION AND ANY OTHER RELEVANT FACTOR.

32 ~~D~~ K. This section does not apply to a person who was adjudicated
33 delinquent for any of the following:

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

36 ~~2. An offense involving the use or exhibition of a deadly weapon~~
37 ~~or dangerous instrument~~ A DANGEROUS OFFENSE as defined in section
38 13-105.

39 2. A SERIOUS OR A VIOLENT OR AGGRAVATED OFFENSE AS DEFINED IN
40 SECTION 13-706

1 3. An offense in ~~violation of title 13, chapter 14~~ FOR WHICH THE
2 PERSON IS REQUIRED OR ORDERED BY THE COURT TO REGISTER PURSUANT TO
3 SECTION 13-3821.

4 ~~4. An offense in violation of section 28-1381, 28-1382, 28-1383 or~~
5 ~~28-3473.~~

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

7 4. AN OFFENSE FOR WHICH THERE HAS BEEN A FINDING OF SEXUAL
8 MOTIVATION PURSUANT TO SECTION 13-118.

9 5. AN OFFENSE IN VIOLATION OF SECTION 28-3473, 28-3482, ANY LOCAL
10 ORDINANCE RELATING TO STOPPING, STANDING OR OPERATION OF A VEHICLE
11 OR TITLE 28, CHAPTER 3, EXCEPT A VIOLATION OF SECTION 28-693 OR
12 28-695 OR ANY LOCAL ORDINANCE RELATING TO THE SAME SUBJECT MATTER
13 AS SECTION 28-693 OR 28-695.

14 Section 4. 8-348.01. Class 6 felony; designation

15 IF A PERSON IS ADJUDICATED OF A CLASS 6 FELONY, THE COURT, HAVING
16 REGARD TO THE NATURE AND CIRCUMSTANCES OF THE CRIME AND TO THE
17 HISTORY AND CHARACTER OF THE DEFENDANT, MAY DESIGNATE THE OFFENSE
18 AS A CLASS 1 MISDEMEANOR. THE OFFENSE SHALL BE TREATED AS A FELONY
19 FOR ALL PURPOSES UNTIL SUCH TIME AS THE COURT MAY ACTUALLY ENTER
20 AN ORDER DESIGNATING THE OFFENSE A MISDEMEANOR.

21 Section 5. 8-349. Sealing of juvenile records; electronic research
22 records

23 A. A person who has been referred to juvenile court may apply ~~for~~
24 ~~destruction of~~ TO HAVE the person's juvenile court and department
25 of juvenile corrections records SEALED.

26 B. If the records concern a referral or citation that did not
27 result in further action or that resulted in diversion, OR
28 placement in a community based alternative program or an
29 adjudication for an offense other than an offense listed in section
30 13-501, subsection A or B or title 28, chapter 4, the person ~~shall~~
31 ~~MAY~~ file an application with the juvenile court and shall serve a
32 copy of the application on the county attorney in the county in
33 which the referral was made. The person shall certify under oath
34 that all of the following apply:

35 1. The person is at least eighteen years of age, OR AGE 19 IF
36 SUBJECT TO RETAINED JURISDICTION PURSUANT TO SECTION 8-202.

37 2. The person has not been convicted of a felony offense or
38 adjudicated delinquent for an offense that would be an offense
39 listed in section 13-501, subsection A or B ~~or title 28, chapter~~
40 ~~4.~~

41 3. A criminal charge is not pending.

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

5 5. All VICTIM restitution ~~and monetary assessments have~~ OWED BY
6 THE PERSON HAS been paid in full, OR THE COURT FINDS, AFTER
7 CONSIDERING VICTIM INPUT, THAT EXTENUATING CIRCUMSTANCES EXIST AND
8 SEALING THE RECORDS IS IN THE INTERESTS OF JUSTICE. THE COURT SHALL
9 NOT CONSIDER OTHER OUTSTANDING MONETARY OBLIGATIONS WHEN
10 DETERMINING WHETHER TO SEAL THE RECORDS. IN DETERMINING WHETHER
11 EXTENUATING CIRCUMSTANCES EXIST THE COURT MAY CONSIDER WHETHER THE
12 PERSON IS SEEKING, OBTAINING OR MAINTAINING EMPLOYMENT IF LEGALLY
13 PERMITTED TO DO SO OR IS ATTENDING SCHOOL, THE PERSON'S MEDICAL
14 CONDITION AND ANY OTHER RELEVANT FACTOR.

15 C. The juvenile court ~~may~~ SHALL order the ~~destruction of~~ records
16 TO BE SEALED under subsection B of this section if the court finds
17 all of the following:

18 1. The person is at least eighteen years of age, OR AGE 19 IF
19 SUBJECT TO RETAINED JURISDICTION UNDER SECTION 8-202.

20 2. The person has not been convicted of a felony offense.

21 3. A criminal charge is not pending.

22 4. The person was not adjudicated for an offense listed in section
23 13-501, subsection A or B ~~or title 28, chapter 4~~.

24 5. The person ~~successfully~~ SATISFACTORILY completed all of the
25 terms and conditions of probation or was discharged from the
26 department of juvenile corrections pursuant to section 41-2820 ~~on~~
27 ~~successful completion of the individualized treatment plan~~.

28 6. All VICTIM restitution ~~and monetary assessments have~~ OWED BY
29 THE PERSON HAS been paid in full, UNLESS THE COURT FINDS, AFTER
30 CONSIDERING VICTIM INPUT, THAT EXTENUATING CIRCUMSTANCES EXIST,
31 AND SEALING THE RECORDS IS IN THE INTERESTS OF JUSTICE. IN
32 DETERMINING WHETHER EXTENUATING CIRCUMSTANCES EXIST THE COURT MAY
33 CONSIDER WHETHER THE PERSON IS SEEKING, OBTAINING OR MAINTAINING
34 EMPLOYMENT IF LEGALLY PERMITTED TO DO SO OR IS ATTENDING SCHOOL,
35 THE PERSON'S MEDICAL CONDITION AND ANY OTHER RELEVANT FACTOR.

36 7. ~~The destruction~~ SEALING ~~of~~ the records is in the interests of
37 justice.

38 8. ~~The destruction~~ SEALING ~~of~~ the records would further the
39 rehabilitative process of the applicant.

40 D. ~~If the records concern a referral that resulted in an~~
41 ~~adjudication of delinquency for an offense not subject to~~ A PERSON

1 WHO IS NOT ELIGIBLE TO HAVE THE PERSON'S RECORDS SEALED UNDER
2 subsection B of this section ~~the person shall~~ MAY file ~~the~~ AN
3 application with the juvenile court and shall serve a copy of the
4 application on the county attorney in the county in which the
5 referral was made. The person shall certify under oath that all of
6 the following apply:

- 7 1. The person is at least ~~twenty-five~~ TWENTY-ONE years of age.
- 8 2. The person has not been convicted of a felony offense.
- 9 3. A criminal charge is not pending.

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

14 4. THE PERSON IS NOT REQUIRED TO REGISTER PURSUANT TO SECTION 13-
15 3821.

16 5. All VICTIM restitution ~~and monetary assessments have~~ OWED BY
17 THE PERSON HAS been paid in full, OR THE COURT FINDS, AFTER
18 CONSIDERING VICTIM INPUT, THAT EXTENUATING CIRCUMSTANCES EXIST,
19 AND SEALING THE RECORDS IS IN THE INTERESTS OF JUSTICE. THE COURT
20 SHALL NOT CONSIDER OTHER OUTSTANDING MONETARY OBLIGATIONS WHEN
21 DETERMINING WHETHER TO SEAL THE RECORDS. IN DETERMINING WHETHER
22 EXTENUATING CIRCUMSTANCES EXIST THE COURT MAY CONSIDER WHETHER THE
23 PERSON IS SEEKING, OBTAINING OR MAINTAINING EMPLOYMENT IF LEGALLY
24 PERMITTED TO DO SO OR IS ATTENDING SCHOOL, THE PERSON'S MEDICAL
25 CONDITION AND ANY OTHER RELEVANT FACTOR.

26 E. The juvenile court may order the ~~destruction of~~ records TO BE
27 SEALED under subsection D of this section if the county attorney
28 does not object within ninety days after the date of the notice
29 and the court finds that all of the following apply:

- 30 1. The person is at least ~~twenty-five~~ TWENTY-ONE years of age.
- 31 2. The person has not been convicted of a felony offense.
- 32 3. A criminal charge is not pending.

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

37 4. THE PERSON IS NOT REQUIRED TO REGISTER PURSUANT TO SECTION 13-
38 3821.

39 5. All restitution ~~and monetary assessments have~~ OWED BY THE
40 APPLICANT HAS been paid in full, OR THE COURT FINDS, AFTER
41 CONSIDERING VICTIM INPUT, THAT EXTENUATING CIRCUMSTANCES EXIST,

1 AND SEALING THE RECORDS IS IN THE INTERESTS OF JUSTICE. THE COURT
2 SHALL NOT CONSIDER OTHER OUTSTANDING MONETARY OBLIGATIONS WHEN
3 DETERMINING WHETHER TO SEAL THE RECORDS. IN DETERMINING WHETHER
4 EXTENUATING CIRCUMSTANCES EXIST THE COURT MAY CONSIDER WHETHER THE
5 PERSON IS SEEKING, OBTAINING OR MAINTAINING EMPLOYMENT IF LEGALLY
6 PERMITTED TO DO SO OR IS ATTENDING SCHOOL, THE PERSON'S MEDICAL
7 CONDITION AND ANY OTHER RELEVANT FACTOR.

8 6. ~~The destruction~~ SEALING ~~of~~ the records would be in the interests
9 of justice.

10 7. ~~The destruction~~ SEALING ~~of~~ the records would further the
11 rehabilitative process of the applicant.

12 F. The juvenile court and the department of juvenile corrections
13 may store any records for research purposes.

14 G. A PERSON WHOSE RECORDS HAVE BEEN SEALED SHALL CONTINUE TO OWE
15 ALL MONETARY OBLIGATIONS THAT ARE ORDERED BY THE COURT THAT REMAIN
16 UNPAID AT THE TIME THE RECORDS ARE SEALED AND IS SUBJECT TO ALL
17 REMEDIES PURSUANT TO SECTIONS 8-344 AND 8-345 UNTIL THE FINANCIAL
18 OBLIGATIONS ARE PAID.

19 H. A PERSON WHOSE RECORDS HAVE BEEN SEALED SHALL NOT BE REQUIRED
20 TO DISCLOSE THE EXISTENCE OF THE RECORDS OR ANY INFORMATION
21 CONTAINED IN THE SEALED RECORDS UNLESS OTHERWISE PROVIDED BY LAW.

22 I. RECORDS SEALED UNDER THIS SECTION MAY BE OBTAINED ONLY BY:

23 1. THE PERSON WHOSE RECORDS WERE SEALED, OR

24 2. THE PERSON'S CONSERVATOR OR GUARDIAN, IF THE PERSON IS
25 DECEASED OR HAS BEEN ADJUDICATED TO BE AN INCAPACITATED PERSON.

26 3. AN AGENCY OF THIS STATE OR A POLITICAL SUBDIVISION UPON REQUEST
27 OF THE PERSON WHOSE RECORDS WERE SEALED.

28 4. A THIRD PARTY AS THE RESULT OF A COURT ORDER REQUESTED BY THE
29 PERSON WHOSE RECORDS WERE SEALED.

30 J. WITHIN SIX MONTHS OF NOTIFICATION BY THE SUPERIOR COURT THAT A
31 PERSON'S JUVENILE RECORDS WERE SEALED, THE DEPARTMENT OF CHILD
32 SAFETY SHALL DESTROY ALL DELINQUENCY COURT, JUVENILE PROBATION,
33 AND ARIZONA DEPARTMENT OF JUVENILE CORRECTIONS RECORDS IN ITS
34 POSSESSION PRODUCED IN THE DELINQUENCY MATTER.

35 K. FOR THE PURPOSES OF THIS SECTION, "SEALED" MEANS THAT THE COURT
36 SHALL NOT DISCLOSE, RELEASE, OR PROVIDE ACCESS TO THE RECORDS TO
37 ANY PERSON FOR ANY REASON EXCEPT AS OTHERWISE PROVIDED BY LAW.

38 Section 6.8-431. Right to possess a firearm; loss; restoration

39 A. A PERSON WHO IS ADJUDICATED DELINQUENT PURSUANT TO TITLE 8,
40 CHAPTER 3 FOR AN OFFENSE IF COMMITTED BY AN ADULT WOULD BE A FELONY
41 DOES NOT HAVE THE RIGHT TO CARRY OR POSSESS A FIREARM.

1 B. IF ORDERED BY THE COURT, A PERSON WHO IS ADJUDICATED DELINQUENT
2 PURSUANT TO TITLE 8, CHAPTER FOR AN OFFENSE THAT IF COMMITTED BY
3 AN ADULT WOULD BE A MISDEMEANOR, DOES NOT HAVE THE RIGHT TO CARRY
4 OR POSSESS A FIREARM WHILE UNDER THE JURISDICTION OF THE JUVENILE
5 COURT OR THE DEPARTMENT OF JUVENILE CORRECTIONS.

6 C. A PERSON WHO WAS ADJUDICATED DELINQUENT WHO HAS BEEN DISCHARGED FROM
7 PROBATION OR FROM THE DEPARTMENT OF JUVENILE CORRECTIONS PURSUANT TO
8 SECTION 41-2820 ON SUCCESSFUL COMPLETION OF THE INDIVIDUALIZED
9 TREATMENT PLAN MAY APPLY TO THE JUVENILE COURT IN THE COUNTY WHERE THE
10 JUVENILE WAS ADJUDICATED DELINQUENT TO HAVE THE RIGHT TO CARRY OR POSSESS
11 A FIREARM RESTORED. THE CLERK OF THE SUPERIOR COURT SHALL PROCESS THE
12 APPLICATION ON THE REQUEST OF THE PERSON INVOLVED OR THE PERSON'S
13 ATTORNEY. THE APPLICANT SHALL SERVE A COPY OF THE APPLICATION ON THE
14 COUNTY ATTORNEY.

15 D. THE PERSON MAY APPLY TO HAVE THE RIGHT TO POSSESS A FIREARM
16 RESTORED TWO YEARS AFTER DISCHARGE FROM PROBATION OR THE DEPARTMENT
17 OF JUVENILE CORRECTIONS, EXCEPT THAT THE PERSON CANNOT APPLY FOR
18 TEN YEARS AFTER DISCHARGE IF ADJUDICATED DELINQUENT FOR ANY OF THE
19 FOLLOWING:

- 20 1. A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-704,
- 21 2. A SERIOUS OFFENSE OR A VIOLENT OR AGGRAVATED OFFENSE AS DEFINED
22 IN SECTION 13-706,
- 23 3. BURGLARY IN THE FIRST DEGREE,
- 24 4. BURGLARY IN THE SECOND DEGREE,
- 25 5. ARSON

26 E. THE COURT SHALL CONSIDER THE NATURE AND CIRCUMSTANCES OF THE
27 OFFENSE THAT THE CONVICTION IS BASED ON AND ANY OTHER FACTOR THAT
28 IS RELEVANT TO THE APPLICATION.

29 F. THE PERSON'S RIGHT TO POSSESS A FIREARM SHALL BE RESTORED IF
30 ORDERED BY THE COURT.

31 Section 7. Section 13-912.01 is repealed.

32 Section 8. ~~13-3113. Adjudicated delinquents; firearm possession;~~
33 classification

34 A person who was previously adjudicated delinquent for an offense
35 that would be a felony if committed by an adult and who CARRIES OR
36 possesses, ~~uses or carries~~ a firearm ~~within ten years from the~~
37 ~~date of his adjudication or his release or escape from custody~~ AND
38 WHOSE RIGHT TO CARRY OR POSSESS A FIREARM IS NOT RESTORED PURSUANT
39 TO SECTION 8-431 is guilty of a class 5 felony for a first offense
40 and a class 4 felony for a second or subsequent offense ~~if the~~
41 ~~person was previously adjudicated for an offense that if committed~~
42 ~~as an adult would constitute:~~

- 1 ~~1. Burglary in the first degree.~~
- 2 ~~2. Burglary in the second degree.~~
- 3 ~~3. Arson.~~
- 4 ~~4. Any felony offense involving the use or threatening exhibition~~
- 5 ~~of a deadly weapon or dangerous instrument.~~
- 6 ~~5. A serious offense as defined in section 13-706.~~

8/6/2018

7:18 am

SEALING OF JUVENILE RECORDS, SETTING ASIDE ADJUDICATION/RESTORATION OF RIGHT TO POSSESS A GUN

LEGAL REQUIREMENTS FOR SEALING OF JUVENILE RECORDS

A.R.S. § 8-349 (B)

If you are **18** years old, **or 19** if Juvenile Court retained jurisdiction under A.R.S. 8-202, you may apply to have Juvenile Court and Arizona Department of Juvenile Corrections delinquency records sealed ***IF***

- The records concern a referral or citation that did not result in further action; ***OR***
- Your case resulted in diversion, placement in a community based alternative program; ***OR***
- An adjudication of delinquency other than those identified below.

In your Application, you must certify under oath that ***ALL*** of the following are true:

- You are at least 18 years of age, ***OR*** I am at least 19 years of age and the Juvenile Court retained jurisdiction under A.R.S. § 8-202.
- A criminal charge is not pending against you in adult court
- You successfully completed diversion
- You have completed all of the conditions of your juvenile court-ordered probation, or received a discharge from the Arizona Department of Juvenile Corrections pursuant to A.R.S. § 41-2820 on successful completion of your individualized treatment plan
- All victim restitution has been paid in full. If victim restitution has not been paid, all of the following must be true:
 - Extenuating circumstances exist for incomplete payment; ***AND***
 - Sealing the records is in the interests of justice.
- You have **not** been convicted of a felony offense (in an adult court) or adjudicated delinquent (in juvenile court) for an offense listed in A.R.S. 13-501 subsection A or B (*see* below) or Title 28 Chapter 4 (driving under the influence).

Offenses included in A.R.S. § 13-501(A)		Offenses included in A.R.S. § 13-501(B)
13-1105	First Degree Murder	<ul style="list-style-type: none"> • Any Class 1 Felony • Any Class 2 Felony • A Class 3 Felony in violation of any offense in chapter 10-17, 19 or 23 of title 13. (Includes most crimes <i>except</i> theft, forgery, and fraud.) • A Class 3, 4, 5, or 6 felony involving the intentional or knowing infliction of serious physical injury or the
13-1104	Second Degree Murder	
13-1406	Forcible Sexual Assault	
13-1904	Armed Robbery	
13-1204(A)(1)	Aggravated Assault: Serious Injury	
13-1204(A)(2)	Aggravated Assault: Deadly Weapon	

13-1209	Drive by Shooting	discharge, use or threatening exhibition of a deadly weapon or dangerous instrument <ul style="list-style-type: none"> Any felony offense committed by a chronic felony offender
13-1211	Discharging a firearm at a structure	
Any felony offense committed by a chronic felony offender		

LEGAL REQUIREMENTS FOR SEALING OF JUVENILE RECORDS

A.R.S. §8-349 (D)

If you are **21** years of age or older but could not apply for the sealing of juvenile records under A.R.S. § 8-349(B) (above), you may apply to have Juvenile Court and Arizona Department of Juvenile Corrections delinquency records sealed as identified below.

In your Application, you must certify under oath that **ALL** of the following are true:

- You are at least 21 years of age.
- You have not been convicted of a felony offense in an adult court.
- A criminal charge is not pending against you in an adult court
- All victim restitution has been paid in full. If victim restitution has not been paid, all of the following must be true:
 - Extenuating circumstances exist for incomplete payment; **AND**
 - Sealing the records is in the interests of justice.
- You are not required to register as a sex offender under A.R.S. § 13-3821,

OR

- You were required to register as a sex offender under A.R.S. § 13-3821, but the Juvenile Court Judge relieved you of the responsibility to register under A.R.S. § 13-3826.

Offenses that require the offender to register as a sex offender under A.R.S. § 13-3821			
13-1303	Unlawful imprisonment	13-3552	Commercial sexual exploitation of a minor
13-1304	Kidnapping if victim is under 18	13-3553	Sexual exploitation of a minor
13-1404	Sexual Abuse if victim is under 18	13-1402	Luring a minor for sexual exploitation
13-1405	Sexual conduct with a minor	13-1402	A second or subsequent violation of indecent exposure to a person under 15.
13-1406	Sexual assault	13-1403(B)	A second or subsequent violation of public sexual

			indecent exposure to a minor under the age of fifteen years
	Sexual assault of a spouse if the offense was committed before August 12, 2005	13-1402	A third or subsequent violation of indecent exposure
13-1410	Molestation of a child	13-1403	A third or subsequent violation of public sexual indecency
13-1417	Continuous sexual abuse of a child	13-3822 or 13-3824	Failure to register as a sex offender or failure to register address.
13-3206	Taking a child for the purpose of prostitution		Unlawful age misrepresentation
13-3212(A) or (B) ¶1 or ¶2 committed before August 9, 2017	Child prostitution	13-3560	Aggravated Luring a minor for sexual exploitation
13-3212(A) or (B) ¶1 or ¶2 committed before August 9, 2017	Child sex trafficking		

LEGAL REQUIREMENTS FOR SETTING ASIDE ADJUDICATIONS

A.R.S. § 8-348

If you are at least **18** years of age, or are at least **19** years of age where the Juvenile Court retained jurisdiction under A.R.S. § 8-202, and you have been adjudicated delinquent or incorrigible, and have fulfilled the conditions of probation and discharge that were ordered by the Juvenile Court or discharged from the Arizona Department of Juvenile Corrections pursuant to § 41-2820 on successful completion of your individual treatment plan, you may apply to set aside the adjudication.

You are **NOT** eligible to apply to set aside the adjudication if you were adjudicated delinquent for any of the following offenses:

- An offense involving the infliction of serious physical injury
- An offense involving the use or exhibition of a deadly weapon or dangerous instrument.
- An offense in violation of title 13, chapter 14 (sexual offenses)
- An offense in violation of section 28-1381 (Driving under the influence), 28-1382 (driving under the extreme influence), 28-1383 (aggravated driving under the influence); or 28-3473 (driving on a suspended license).
- A traffic violation under title 28, chapter 3 (various traffic offenses—See 8-348(D)(5)).

In the Application, you must certify under oath that **ALL** of the following are true:

- You are at least 18 years of age **OR** you are at least 19 years of age where the Juvenile Court retained jurisdiction under A.R.S. § 8-202
- The offense was not in violation of the above stated statutes
- You have not been convicted of a criminal offense in an adult court
- You do not have a criminal charge pending in an adult court
- You have completed all of the conditions of your court-ordered probation or received a discharge from the Arizona Department of Juvenile Corrections upon successful completion of your individualized treatment plan
- All victim restitution you (not your parent/guardian) were ordered to pay, has been paid in full.

LEGAL REQUIREMENTS FOR RESTORATION OF RIGHT TO CARRY OR POSSESS A GUN OR FIREARM

A.R.S. § 8-431

You may apply for the restoration of your civil right to carry or possess a gun or firearm as set forth below.

In the Application, you must certify under oath that **ONE** of the following is true:

- If you were adjudicated delinquent for a dangerous offense under A.R.S. § 13-704, a serious offense as defined in A.R.S. § 13-706, burglary in the first degree, burglary in the second degree, or arson, you must certify that it has been **ten years** since your discharge from probation or the department of juvenile corrections
 - A dangerous offense under A.R.S. § 13-704 means “an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person (see A.R.S. § 13-105(13)).
 - Serious offense under A.R.S. § 13-706 include: first degree murder, second degree murder, manslaughter, aggravated assault resulting in serious physical injury or involving the discharge, use, or threatening exhibition of a deadly weapon or dangerous instrument, sexual assault, any dangerous crime against children, arson of an occupied structure, armed robbery, burglary in the first degree, kidnapping, or sexual conduct with a minor under 15 years of age, and child prostitution
- If you were adjudicated delinquent for any other felony offense with a date of offense on or after July 17, 1994, you must certify that it has been **two years** since you were discharge from probation or the Arizona Department of Juvenile Corrections.

INSTRUCTIONS: HOW TO COMPLETE THE FORM

In **BLUE INK**, please complete the form following the instructions below.

You may obtain information such as your case number from the Clerk of the Superior Court in the county in which you were adjudicated.

Heading: At the top of the form, please fill in your name, street address, city, state, zip code, telephone number (if not protected).

Put a check mark in the box “Self” if you are representing yourself.

Otherwise, put a check mark in the box “Attorney,” fill in your name on the blank following “for,” and fill in the attorney bar number.

Fill in your first and last name on the line above “Applicant.”

Fill in your date of birth on the line above “Applicant’s DOB.”

Fill in your case number on the line after “JV.”

Item 1: Complete the **personal information** requested (if not protected).

Fill in the name of the law enforcement agency that referred you to the Juvenile Court.

Item 2: If you are requesting that your juvenile adjudication record be **sealed** complete this section.

Item 2A: Complete this section if you are at least **18**, or **19** and the Juvenile has retained jurisdiction of your case.

Check all boxes that are **true**.

Item 2B: Complete this section if you are at least **21**.

Check all boxes that are **true**.

Item 3: Complete this section if you are request that the court set aside your adjudication, and/or you wish to have your right to carry or possess a gun or firearm restored.

Item 3A: Complete this section if you are requesting the court to **set aside** your adjudication.

Fill in the date the Petition was filed.

Check all boxes that are **true**.

Item 3B: Complete this section if you are requesting the court to restore your **right to carry or possess a gun or firearm**.

Check all boxes that are **true**.

Item 4: While the court can grant your requests without a **hearing**, if you would like a hearing to explain any extenuating circumstances, you may request one by checking this box.

Date and sign the form.

PROCEDURES

1. Read all materials prior to filing to determine if you meet the requirements for the request you are making.
2. Complete the Application form **legibly** using **BLUE** ink.
3. Sign the Application. It does **NOT** have to be notarized.
4. **You must file the original and two (2) copies** of the Application with the Clerk of the Court.

The Clerk of the Court will serve the County Attorney with a copy of the Application. The County Attorney has up to 90 days within which to file a response to the Application regarding your juvenile records.

5. The Clerk of the Court will return one copy of the Application for **your records**.

Person Filing: _____
 Address (if not protected): _____
 City, State, Zip Code: _____
 Telephone: _____
 Email Address: _____
 Representing Self or Attorney for _____
 Lawyer's Bar Number: _____

For Clerk's Use Only

SUPERIOR COURT OF ARIZONA
IN _____ COUNTY

IN THE MATTER OF:

CASE NO: JV: _____

 (Applicant's Name)

APPLICATION TO SEAL JUVENILE RECORDS (A.R.S. § 8-349)

 (Applicant's DOB)

APPLICATION TO SET ASIDE AND RESTORE RIGHT TO POSSESS A GUN (A.R.S. § 8-348; § 13-912.01)

(USE BLUE INK: PRINT LEGIBLY)

1. PERSONAL INFORMATION

First Name	Middle Name	Last Name
Street Address	Mailing Address (if different)	
City, State, Zip Code	City, State, Zip Code (if different)	
()		
Phone Number	E-mail Address	

Police Agencies to be notified (when sealing of juvenile records or setting aside an adjudication)

I apply for the relief indicated below and certify under penalty of law that the following is true (as marked)

2. SEALING OF JUVENILE RECORDS, A.R.S. § 8-349

A. I request my juvenile records be sealed (including Arizona Department of Juvenile Corrections records) pursuant to A.R.S. § 8-349(B) and state that all of the following are true:

- I am at least **18** years of age **OR** I am at least **19** years of age where the Juvenile Court retained jurisdiction under A.R.S. § 8-202; **AND**
- I have not been convicted of a felony offense (in an adult court) or adjudicated delinquent (in juvenile court) for an offense listed in A.R.S. § 13-501 subsections A or B or Title 28 (*See* handout for description of the offenses contained in these statutes)
- A criminal charge is not pending against me in an adult court; **AND**
- I successfully completed diversion and/or my referral to juvenile court did not result in the filing of a petition or my participation in the diversion program **OR**
- I have successfully completed all of the conditions of court-ordered probation, **OR**
- I have received an absolute discharge from the Arizona Department of Juvenile corrections pursuant to A.R.S. § 41-2820 on successful completion of my individualized treatment plan; **AND**
- All restitution and monetary assessments I was ordered to pay, have been paid in full; **OR**
- If restitution has not been paid, I certify all of the following are true:
 - Extenuating circumstances exist for incomplete payment; **AND**
 - Sealing the records is in the interests of justice.

OR

B. I request my juvenile records be sealed (including Arizona Department of juvenile Corrections records) pursuant to A.R.S. § 8-349(D) and state that all of the following are true:

- I am at least 21 years of age; **AND**
- I have not been convicted of a felony offense (in adult court); **AND**
- A criminal charge is not pending against me in an adult court; **AND**
- I am not required to register pursuant to section A.R.S. § 13-3821 (see handout); **AND**
- All restitution and monetary assessments I was ordered to pay have been paid in full. **OR**

- If restitution has not been paid, I certify all of the following are true:
 - Extenuating circumstances exist for incomplete payment; **AND**
 - Sealing the records is in the interests of justice.

3. SETTING ASIDE ADJUDICATION, A.R.S. § 8-348 AND RESTORATION OF RIGHT TO POSSESS A GUN, A.R.S. § 13-912.01

A. Pursuant to A.R.S. § 8-348, I request the Court to set aside the adjudication on the petition(s) filed on

_____ **and that I be released from all penalties and disabilities including the right to possess a gun resulting from that/those adjudication(s), except those imposed by the Department of Transportation pursuant to A.R.S. §§ 28-3304, 28-3306, 28-3307, or 28-3308. (Note: You must enter a specific date. Requests for the Court to set aside “ALL” adjudications will be denied.)**

- I am at least 18 years of age **OR** I am at least 19 years of age where the Juvenile Court retained jurisdiction under A.R.S. § 8-202; **AND**
- The offense was not in violation of statutes identified in A.R.S. § 8-348(D) (i.e., an offense involving: the infliction of serious physical injury or use or exhibition of a deadly weapon or dangerous instrument as defined in A.R.S. § 13-105; an offense in violation of title 13, chapter 14; specific offenses under title 28 or title 28, chapter 3); **AND**
- I have not been convicted of any criminal offense in an adult court; **AND**
- I do not have a criminal charge pending in an adult court; **AND**
- I have successfully completed all of the conditions of my court-ordered probation or I have received an absolute discharge from the Arizona Department of Juvenile Corrections pursuant to A.R.S. § 41-2820 on successful completion of my individualized treatment plan; **AND**
- All restitution and monetary assessments which I was ordered to pay, have been paid in full.

B. I request the court restore my civil right to carry or possess a gun or firearm pursuant to A.R.S. § 13-912.01. The statement checked below is true and accurate (choose only ONE).

I was adjudicated for a felony offense and it has been at least **two years** since I was discharged from probation. I have not been adjudicated delinquent for a dangerous offense under A.R.S. § 13-704, a serious offense as defined in A.R.S. § 13-706, burglary in the first degree, burglary in the second degree, or arson. A.R.S. § 13-912.01(B)

OR

I was adjudicated delinquent for a dangerous offense under section A.R.S. § 13-704 or a serious offense as defined in ARS 13-706, burglary in the first degree, burglary in the second degree or arson. A.R.S. § 13-912.01(C) AND it has been at least **ten years** since I was discharged from probation or the Arizona Department of Juvenile Corrections.

4. REQUEST FOR HEARING

I have extenuating circumstances that prevented full payment of restitution. I request a hearing, so the court may consider the extenuating circumstances.

I certify under the penalty of perjury that the foregoing information is true and correct to the best of my knowledge and belief.

Date

Signature

13-3101. Definitions

A. In this chapter, unless the context otherwise requires:

1. "Deadly weapon" means anything that is designed for lethal use. The term includes a firearm.
2. "Deface" means to remove, alter or destroy the manufacturer's serial number.
3. "Explosive" means any dynamite, nitroglycerine, black powder, or other similar explosive material, including plastic explosives. Explosive does not include ammunition or ammunition components such as primers, percussion caps, smokeless powder, black powder and black powder substitutes used for hand loading purposes.
4. "Firearm" means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will expel, is designed to expel or may readily be converted to expel a projectile by the action of an explosive. Firearm does not include a firearm in permanently inoperable condition.
5. "Improvised explosive device" means a device that incorporates explosives or destructive, lethal, noxious, pyrotechnic or incendiary chemicals and that is designed to destroy, disfigure, terrify or harass.
6. "Occupied structure" means any building, object, vehicle, watercraft, aircraft or place with sides and a floor that is separately securable from any other structure attached to it, that is used for lodging, business, transportation, recreation or storage and in which one or more human beings either are or are likely to be present or so near as to be in equivalent danger at the time the discharge of a firearm occurs. Occupied structure includes any dwelling house, whether occupied, unoccupied or vacant.
7. "Prohibited possessor" means any person:
 - (a) Who has been found to constitute a danger to self or to others or to have a persistent or acute disability or grave disability pursuant to court order pursuant to section 36-540, and whose right to possess a firearm has not been restored pursuant to section 13-925.
 - (b) Who has been convicted within or without this state of a felony or who has been adjudicated delinquent for a felony and whose civil right to possess or carry a gun or firearm has not been restored.
 - (c) Who is at the time of possession serving a term of imprisonment in any correctional or detention facility.
 - (d) Who is at the time of possession serving a term of probation pursuant to a conviction for a domestic violence offense as defined in section 13-3601 or a felony offense, parole, community

supervision, work furlough, home arrest or release on any other basis or who is serving a term of probation or parole pursuant to the interstate compact under title 31, chapter 3, article 4.1.

(e) Who is an undocumented alien or a nonimmigrant alien traveling with or without documentation in this state for business or pleasure or who is studying in this state and who maintains a foreign residence abroad. This subdivision does not apply to:

(i) Nonimmigrant aliens who possess a valid hunting license or permit that is lawfully issued by a state in the United States.

(ii) Nonimmigrant aliens who enter the United States to participate in a competitive target shooting event or to display firearms at a sports or hunting trade show that is sponsored by a national, state or local firearms trade organization devoted to the competitive use or other sporting use of firearms.

(iii) Certain diplomats.

(iv) Officials of foreign governments or distinguished foreign visitors who are designated by the United States department of state.

(v) Persons who have received a waiver from the United States attorney general.

(f) Who has been found incompetent pursuant to rule 11, Arizona rules of criminal procedure, and who subsequently has not been found competent.

(g) Who is found guilty except insane.

8. "Prohibited weapon":

(a) Includes the following:

(i) An item that is a bomb, grenade, rocket having a propellant charge of more than four ounces or mine and that is explosive, incendiary or poison gas.

(ii) A device that is designed, made or adapted to muffle the report of a firearm.

(iii) A firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger.

(iv) A rifle with a barrel length of less than sixteen inches, or shotgun with a barrel length of less than eighteen inches, or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than twenty-six inches.

(v) An instrument, including a nunchaku, that consists of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, in the design of a weapon used in connection with the practice of a system of self-defense.

(vi) A breakable container that contains a flammable liquid with a flash point of one hundred fifty degrees Fahrenheit or less and that has a wick or similar device capable of being ignited.

(vii) A chemical or combination of chemicals, compounds or materials, including dry ice, that is possessed or manufactured for the purpose of generating a gas to cause a mechanical failure, rupture or bursting or an explosion or detonation of the chemical or combination of chemicals, compounds or materials.

(viii) An improvised explosive device.

(ix) Any combination of parts or materials that is designed and intended for use in making or converting a device into an item set forth in item (i), (vi) or (viii) of this subdivision.

(b) Does not include:

(i) Any fireworks that are imported, distributed or used in compliance with state laws or local ordinances.

(ii) Any propellant, propellant actuated devices or propellant actuated industrial tools that are manufactured, imported or distributed for their intended purposes.

(iii) A device that is commercially manufactured primarily for the purpose of illumination.

9. "Trafficking" means to sell, transfer, distribute, dispense or otherwise dispose of a weapon or explosive to another person, or to buy, receive, possess or obtain control of a weapon or explosive, with the intent to sell, transfer, distribute, dispense or otherwise dispose of the weapon or explosive to another person.

B. The items set forth in subsection A, paragraph 8, subdivision (a), items (i), (ii), (iii) and (iv) of this section do not include any firearms or devices that are possessed, manufactured or transferred in compliance with federal law.

Arizona Rules of Criminal Procedure

Rule 24.3. Modification of Sentence

(a) Generally. No later than 60 days of the entry of judgment and sentence or, if a notice of appeal has already been filed under Rule 31, no later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed, the court may correct any unlawful sentence or one imposed in an unlawful manner.

(b) Appeal.

(1) *Noncapital Cases.* In noncapital cases, the party appealing a final decision under Rule 24.3 must file a notice of appeal with the trial court clerk no later than 20 days after entry of the decision in superior court cases, or no later than 14 days after entry of the decision in limited jurisdiction court cases.

(2) *Capital Cases.* In capital cases, after denying modification of a sentence of death, the court must order the clerk to file a notice of appeal from the denial.

(c) Mitigation. On motion of the defendant, or on the court's own motion, the court may mitigate a fine, ~~surcharge~~ under A.R.S. §§12-116.01 and 12-116.02, and an assessment under A.R.S. §12-116.08, contained in the judgment and sentence, other than a mandatory fine, due to defendant's financial circumstances. The court may also mitigate a surcharge if a mandatory fine is imposed. In deciding whether to mitigate a fine, surcharge or assessment, the court may consider any relevant evidence including:

(1) The impact of the fine on the ability of the defendant to pay the restitution.

(2) The extent of the financial hardship on the defendant or on the defendant's immediate family.

(3) The defendant's indigence indicated by qualification for benefits from any of the following:

(A) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act.

(B) The Supplemental Nutrition Assistance Program (7 U.S. C. §§ 2011 through 2036c).

(C) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f).

(D) The Medicaid Program (42 U.S.C. §§ 1396 et seq.)

(4) Whether the defendant is seeking, obtaining, or maintaining employment if able and legally permitted to do so, or is attending school.

(5) The defendant's medical and mental condition.

Rule 26.12. Defendant's Compliance with Monetary and Non-Monetary Terms of a Sentence

(a) Method of Payment--Installments. The court may permit the defendant to pay any fine, restitution, or other monetary obligation within a specified period of time or in specified installments. The defendant must pay restitution as promptly as possible, given the defendant's ability to pay.

(b) Method of Payment--to Whom. The defendant must pay a fine, restitution, or other monetary obligations to the court, unless the court orders otherwise. The court must apply the defendant's payments first to satisfy the restitution order and the payment of any restitution in arrears. The court must forward restitution payments to the victim as promptly as practicable.

(c) Failure to Pay a Monetary Obligation or to Comply with Court Orders.

(1) *Defendants Not on Supervised Probation.* If a defendant who is not on supervised probation fails to pay a fine, restitution, or other monetary obligation, or fails to comply with any other term or condition of sentence within the prescribed time, the court must promptly notify the State.

(2) *Defendants on Supervised Probation.* If a defendant who is on supervised probation fails to pay a fine, restitution, or other monetary obligation, or fails to comply with any other term or condition of probation within the prescribed time, the court must promptly notify the defendant's probation officer.

(3) *Court Action upon Failure of a Defendant to Pay a Fine, Restitution, or Other Monetary*

Obligation or to Comply with Court Orders. If the defendant fails to timely pay a fine, restitution, or other monetary obligation, or otherwise fails to comply with a court order, and fails to respond to a court notice informing the defendant of the consequences and resolution options, the court may issue an arrest warrant or a summons and require the defendant to show cause why he or she should not be held in contempt. The court must issue a summons unless there is reason to believe a warrant is required to secure the defendant's appearance. A prosecutor who requests a warrant, or a judge who orders a warrant, must state the reasons for the issuance of a warrant rather than a summons.

(4) *Authority to Modify Monetary Obligation.* If the court finds the defendant's default is not willful and the defendant is unable to pay all or part of the monetary obligation, the court may mitigate the fine, ~~surcharge~~ under A.R.S. §§12-116.01 and 12-116.02, and an assessment under 12-116.08, other than a mandatory fine. The court may also mitigate a surcharge if a mandatory fine is imposed. In determining whether the defendant is unable to pay all or part of a financial sanction, the court may consider any relevant evidence including the factors listed in Rule 24.3(c).

(5) *Exclusion of Certain Income.* Under federal and state law, in determining whether to find the defendant in contempt, the court must exclude income derived from the following sources:

(A) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act (A.R.S. 46-208);

(B) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f);

(C) The Social Security Disability Insurance Program (42 U.S.C. §§ 401-433); and

(D) Veterans Disability Compensation.

(4)(6) *Incarceration for Contempt.* If the court finds the defendant in contempt for failure to pay a monetary obligation or failure to comply with a court order, before ordering the defendant incarcerated for contempt, the court must determine that no reasonable measures other than incarceration are adequate to meet the State's interests and permit the defendant a reasonable period of time to pay the obligation in full or make other payment arrangements.

Rules of Court Procedure for Civil Traffic and Civil Boating Violations

Rule 24.1. Mitigation

On motion of the defendant, or on the court's own motion, the court may mitigate a civil

penalty imposed pursuant to Title 28, Chapters 3, 5, 7, and 9, ~~a surcharge under A.R.S. §§12-116.01 and 12-116.02,~~ and an assessment under A.R.S. 12-116.08, if the person demonstrates that the payment would be a hardship on the person or on the person's immediate family. In deciding whether to mitigate a civil penalty, surcharge, or assessment, the court may consider any relevant evidence including:

(a) The extent of the financial hardship on the defendant or on the defendant's immediate family.

(b) The defendant's indigence indicated by qualification for benefits from any of the following:

(1) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act.

(2) The Supplemental Nutrition Assistance Program (7 U.S. C. §§ 2011 through 2036c).

(3) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f).

(4) The Medicaid Program (42 U.S.C. §§ 1396 et seq.)

(c) Whether the defendant is seeking, obtaining, or maintaining employment if able and legally permitted to do so, or is attending school.

(d) The defendant's medical and mental condition.

David K. Byers
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 Administrative Office of the Courts
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 Projects2@courts.az.gov

IN THE SUPREME COURT
 STATE OF ARIZONA

In the Matter of)	
)	
PETITION TO AMEND RULES)	
24.3 and 26.12 OF THE ARIZONA)	Supreme Court No. R-18-____
RULES OF CRIMINAL)	
PROCEDURE; AND RULE 24.1)	
RULES OF COURT PROCEDURE)	
FOR CIVIL TRAFFIC AND CIVIL)	
BOATING VIOLATIONS)	
_____)	

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, and Chair of the Supreme Court Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies (“the Task Force”) respectfully petitions this Court to amend Rules 24.3 and 26.12 of the Rules of Criminal Procedure and to add a new Rule 24.1 to the Rules of Court Procedure for Civil Traffic and Civil Boating Violations. The rule changes are set forth in Appendix A.

The Task Force recommended changes to various statutes that give judges greater discretion to mitigate penalties and surcharges when warranted by a

defendant's financial circumstances. That recommendation culminated in the Arizona Judicial Council's legislative proposals introduced and enacted by the legislature as HB 2313 (Laws 2018, Chap. 237, §9) and HB 2169 (Laws 2018, Chap. 113, §8). Both bills are effective January 1, 2019. An additional bill, also effective on January 1, 2019, HB 2527 (Laws 2018, Chap. __ §2) permits mitigation of Police Training Equipment assessment pursuant to A.R.S. §12-112.08.¹

Purpose and Explanation of the Proposed Rule Amendments. The proposed rule changes are consistent with the policies underlying the new legislation and to clarify that courts are permitted to mitigate certain monetary obligations contained in criminal sentences and civil traffic judgments - even after the sentence is pronounced. The proposed changes follow through on the Task Force's principles and should enable the courts to more effectively deal with individuals in the justice system experiencing serious financial challenges.

In criminal cases, Arizona case law currently limits a court's ability to change a sentence to those situations where a sentence is found to be unlawful or imposed in an unlawful manner pursuant to Rule 24.3, or to correct a clerical error pursuant to Rule 24. *See, e.g., State v. Superior Court*, 124 Ariz. 288, 603 P.2d 915 (1979); *State v. Falkner*, 112 Ariz. 372, 542 P.2d 404 (1975); *State v. Guthrie*, 110 Ariz.

¹ The statutory reference, §12-112.08, may change as two bills in the 2018 legislative session enacted the same numbered statutes. Legislative Council will renumber one of the statutes, probably by mid-June. Petitioner will correct the reference, if necessary, in his Reply.

257, 517 P.2d 1253 (1974); *State v. Serrano*, 234 Ariz. 491, 323 P.3d 774, (App. Div. 2, 2014); *State v. Thomas*, 142 Ariz. 201, 204, 688 P.2d 1093, 1096 (App. Div. 1, 1984); “[T]he trial court's jurisdiction in post-trial motions is limited to that set out in the Rules, and an exercise of that jurisdiction is permissible only upon the grounds specified therein.” *State v. Falkner*, *supra*. See also, *State v. Filipov*, 118 Ariz. 319, 326, 576 P.2d 507, 514 (Ariz. Ct. App. Div. 1, 1977) (“It is clear that Rule 24.3, Arizona Rules of Criminal Procedure does not permit a sentencing judge's reduction of an already lawfully imposed sentence”).

The proposed amendments to Criminal Rules 24.3 and 26.12 authorize courts to mitigate the fine and civil penalty at any time following sentencing, with the exception of a mandatory fine in a criminal case and the clean elections surcharge (ARS § 16-954). Even though a mandatory fine in a criminal case cannot be mitigated, the surcharges, except the clean elections surcharge, can be mitigated, consistent with the newly-enacted ARS §13-825. The proposal, consistent with HB 2527, also permits the mitigation of the Peace Officer Training Fund assessment under A.R.S. § 12-116.08.²

The proposed addition of Civil Traffic Rule 24.1 mirrors the changes made to Criminal Rule 24.3(c) with modifications to terminology consistent with the Civil Traffic Rules, and consistent with newly-enacted ARS § 28-1603 (Laws 2018, Chap.

² See footnote #1

113 § 8), which permits the court to mitigate a civil traffic penalty imposed pursuant to Title 28, Chapters 3, 5, 7 and 9.

By operation of law, if a fine or civil penalty is mitigated, all surcharges are reduced as they are a percentage component of the fine or civil penalty imposed.

II. Preliminary Comments. The proposed amendments have not been circulated to stakeholders for comment before filing. Therefore, an opportunity for comment as part of the Court's review is recommended. Due to the importance of this proposal, Petitioner requests the Court set a comment period ending October 15, 2018, with Petitioner's Reply due October 25, 2018, and consideration by the Court at its regular December rules agenda.

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure and the Rules of Court Procedure for Civil Traffic and Civil Boating Violations, as proposed in Appendix A.

RESPECTFULLY SUBMITTED this 8th day of May, 2018.

By /s/ _____
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APPENDIX A³

(language to be removed is shown in ~~strikethrough~~, new language is underlined)

Arizona Rules of Criminal Procedure

Rule 24.3. Modification of Sentence

(a) Generally. No later than 60 days of the entry of judgment and sentence or, if a notice of appeal has already been filed under Rule 31, no later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed, the court may correct any unlawful sentence or one imposed in an unlawful manner.

(b) Appeal.

(1) *Noncapital Cases.* In noncapital cases, the party appealing a final decision under Rule 24.3 must file a notice of appeal with the trial court clerk no later than 20 days after entry of the decision in superior court cases, or no later than 14 days after entry of the decision in limited jurisdiction court cases.

(2) *Capital Cases.* In capital cases, after denying modification of a sentence of death, the court must order the clerk to file a notice of appeal from the denial.

(c) Mitigation. On motion of the defendant, or on the court's own motion, the court may mitigate a fine, surcharge under A.R.S. §§12-116.01 and 12-116.02, and an assessment under A.R.S. §12-116.08, contained in the judgment and sentence, other than a mandatory fine, due to defendant's financial circumstances. The court may also mitigate a surcharge if a mandatory fine is imposed. In deciding whether to mitigate a fine, surcharge or assessment, the court may consider any relevant evidence including:

(1) The impact of the fine on the ability of the defendant to pay the restitution.

(2) The extent of the financial hardship on the defendant or on the defendant's immediate family.

(3) Whether the defendant is receiving benefits pursuant to any of the following:

³ All statutory references to §12-112.08 may change as two bills in the 2018 legislative session enacted the same numbered statutes. Legislative Council will renumber one of the statutes, probably by mid-June. Petitioner will correct the reference, if necessary, in his Reply.

(A) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act.

(B) The Supplemental Nutrition Assistance Program (7 U.S. C. §§ 2011 through 2036c).

(C) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f).

(4) Whether the defendant is seeking, obtaining, or maintaining employment if legally permitted to do so or is attending school.

(5) The defendant's medical condition.

Rule 26.12. Defendant's Compliance with Monetary and Non-Monetary Terms of a Sentence

(a) Method of Payment--Installments. The court may permit the defendant to pay any fine, restitution, or other monetary obligation within a specified period of time or in specified installments. The defendant must pay restitution as promptly as possible, given the defendant's ability to pay.

(b) Method of Payment--to Whom. The defendant must pay a fine, restitution, or other monetary obligations to the court, unless the court orders otherwise. The court must apply the defendant's payments first to satisfy the restitution order and the payment of any restitution in arrears. The court must forward restitution payments to the victim as promptly as practicable.

(c) Failure to Pay a Monetary Obligation or to Comply with Court Orders.

(1) *Defendants Not on Supervised Probation.* If a defendant who is not on supervised probation fails to pay a fine, restitution, or other monetary obligation, or fails to comply with any other term or condition of sentence within the prescribed time, the court must promptly notify the State.

(2) *Defendants on Supervised Probation.* If a defendant who is on supervised probation fails to pay a fine, restitution, or other monetary obligation, or fails to comply with any other term or condition of probation within the prescribed time, the court must promptly notify the defendant's probation officer.

(3) *Court Action upon Failure of a Defendant to Pay a Fine, Restitution, or Other Monetary Obligation or to Comply with Court Orders.* If the defendant fails to timely pay a fine, restitution, or other monetary obligation, or otherwise fails to comply with a court order, and fails to respond to a court notice informing the defendant of the consequences and resolution options, the court may issue an arrest warrant or a summons and require the defendant to show cause why he or she should not be held in contempt. The court must issue a summons unless there is reason to believe a warrant is required to secure the defendant's appearance. A prosecutor who requests a warrant, or a judge who orders a warrant, must state the reasons for the issuance of a warrant rather than a summons.

(4) *Authority to Modify Monetary Obligation.* If the court finds the defendant's default is not willful and the defendant is unable to pay all or part of the monetary obligation, the court may mitigate the fine, surcharge under A.R.S. §§12-116.01 and 12-116.02, and an assessment under 12-116.08, other than a mandatory fine. The court may also mitigate a surcharge if a mandatory fine is imposed. In determining whether the defendant is unable to pay all or part of a financial sanction, the court may consider the factors listed in Rule 24.3(c).

(5) *Incarceration for Contempt.* If the court finds the defendant in contempt for failure to pay a monetary obligation or failure to comply with a court order, before ordering the defendant incarcerated for contempt, the court must determine that no reasonable measures other than incarceration are adequate to meet the State's interests and permit the defendant a reasonable period of time to pay the obligation in full or make other payment arrangements.

Rules of Court Procedure for Civil Traffic and Civil Boating Violations

Rule 24.1. Mitigation

On motion of the defendant, or on the court's own motion, the court may mitigate a civil penalty imposed pursuant to Title 28, Chapters 3, 5, 7, and 9, a surcharge under A.R.S. §§12-116.01 and 12-116.02, and an assessment under A.R.S. 12-112.08, if the person demonstrates that the payment would be a hardship on the person or on the person's immediate family. In deciding whether to mitigate a civil penalty, surcharge, or assessment, the court may consider any relevant evidence including:

(a) The extent of the financial hardship on the defendant or on the defendant's immediate family.

(b) Whether the defendant is receiving benefits pursuant to any of the following:

(1) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act.

(2) The Supplemental Nutrition Assistance Program (7 U.S. C. §§ 2011 through 2036c).

(3) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f).

(c) Whether the defendant is seeking, obtaining, or maintaining employment if legally permitted to do so or is attending school.

(d) The defendant's medical condition.