

Post-Conviction Actions Task Force Minutes

Tuesday, June 25, 2019

Established by A.O. No. 2018-52

Present: Jerry Landau, Chair; Kurt Altman; Alex Benezra; Kirstin Flores; Jessica Fortinos, Judge Craig Jennings; Jared Keenan, Amy Love; Judge Sam Myers; Tom O'Connell; Judge Kathleen Quigley; Judge Antonio Riojas; Leonard Ruiz; Judge Keith Russell; Amber Sliwinski; Mikel Steinfeld; Kent Volkmer; Cathy Whalen

Appearing Telephonically: Lisa Royal; Tom Zaworski

Absent: Julie Ahlquist; Cathy Clarich; Colleen Clase; Mirisue Galindo; Ryan Glover; Donald Jacobson; Kathy Waters

Presenters/Guests: Jaspar Altaha, Maricopa County Voter Registration Manager; Meranda Jaime, Maricopa County Voter Registration; Sambo Dul, State Elections Director; Leslie Hoffman, Yavapai County; Betty McEntire, Secretary of State's Office; Jennifer Marson, Exec. Director for Arizona Association of Counties; Karen McCracken, Yavapai County; Kenosha Skinner, Maricopa County Recorder's Office Community Relations Coordinator

Staff: Jerry Landau, Jennifer Greene, Tom O'Connell, Kathy Sekardi

Welcome and Opening Remarks

With a quorum present, Tom O'Connell, called the meeting to order at 9:35 a.m. and welcomed the members. Kathy Sekardi called the membership roll. (Jerry Landau was attending a meeting at the House of Representatives).

Mr. O'Connell informed the members that A.O. No. 2019-61 extends the term of the Task Force to December 31, 2019 and introduced new task force members; Jessica Fortinos, Maricopa County Clerk's Office; Judge Craig Jennings, Avondale Municipal Court; Jared Keenan, Cathryn Whalen, and Tom Zaworski.

Minutes

Mr. O'Connell presented the minutes of the May 7, 2019, meeting of the Task Force for approval.

<p>Motion: Judge Sam Myers moved to approve the minutes of the November 27, 2018. Second: Mikel Steinfeld. Vote: Passed unanimously.</p>

Juvenile Subcommittee report on forms/instructions

The following documents were reviewed and updated with suggested edits by the members:

- Application to Set Aside Juvenile Adjudication
- Application for Destruction of Records
- Application for Restoration of Firearm Rights
- Legal Requirements

- Notice of Important Rights
- Court Order Form

Jerry Landau joined the meeting. Mr. Landau established a forms workgroup to review and finalize the remaining forms, instructions, orders and notices. Members who volunteered to be on the workgroup are: Tom O'Connell, chair, Judge Quigley, Cathryn Whalen, Mikel Steinfield, Judge Ruiz and Jessica Fortinos. The workgroup is tasked with reviewing the following forms and instructions to present to the full task force:

Juvenile:

- Application to Set Aside Juvenile Adjudication
- Application for Destruction of Records
- Application for Restoration of Firearm Rights
- Legal Requirements
- Notice of Important Rights
- Court Order Form
- Juvenile Set Aside Instructions
- Juvenile Destruction of Records Instructions
- Juvenile Restore Firearms Rights Instructions

Adult:

- Application to Set Aside Conviction
- Application for Restoration of Civil Rights and Firearm Rights
- Firearm Only Application to Restore and Reconsideration
- Order Regarding Set Aside and Restore Right to Firearms
- Order Regarding Application to Restore Civil Rights and Restore Right to Possess Firearms

Mr. Landau thanked the forms workgroup volunteers and stated that the workgroup would send the revised forms to the task force for final review. He suggested that once the forms are completed a petition(s) would be filed to have the new forms added to their respective rules.

Motion: Judge Kathleen Quigley moved to file petitions to amend rules for juvenile and criminal procedures to include the forms. **Second:** Judge Craig Jennings. **Vote:** Passed unanimously.

Implementation of Restoration of Civil Rights *(taken out of order)*

Mr. Landau reached out to the Arizona Association of Counties and the Secretary of State's Office for direction regarding the procedure after restoration of civil rights has been court-ordered. Both sent representatives to the meeting.

During the discussion, questions were posed and answered:

- Once a court orders civil rights to be restored, (right to vote, serve on jury, hold public office), how is the right returned to them, where should it go, how does a person get notified?
 - A person is not required to show proof of civil rights restoration. The person must re-register to have their voting rights restored to them.
 - A report is transmitted to the Secretary of State's Office by the courts on the disposition of criminal and felony convictions, the report is uploaded to the voter registration database, distributed to the appropriate counties for the county recorders to perform cancelation of voter records based on criminal and felony convictions.

- The operationally accurate way to describe the process is that it is the “restoration of the eligibility of right to vote.” A registrant must apply and sign the application affirmation of eligibility, under penalty of perjury, stating that the registrant has not been convicted of a felony that included the revocation of civil rights.
 - Currently the courts do not receive notification of restoration of civil rights, only notification of initial conviction.
- Should the statute be amended to state “restoration of eligibility” versus restoration of right to vote? Should the courts and clerks copy county recorders on minute entries?
 - A person should re-register as a voter because the courts and counties have no idea where a person will settle upon their release. By virtue of re-registering, a person can receive the right to serve on a jury.
 - In Maricopa county if formal application is made for restoration of civil rights the applicant will receive notice of approval or denial of application. Maricopa county encourages first time offenders to apply for restoration versus automatic restoration.
 - A decision was made to not pursue a changing the title of the statute.
- What is the process for first time offenders?
 - Language could be added to a form that states that court fines and fees are not required to be paid before rights are restored, however, victim restitution must be paid in full. A person may not be notified that civil rights have been restored and that they will need to re-register for eligibility for voting rights.
- The system needs a mechanism for dealing with first offenses; however, how would a court or judge would know if restitution is paid in full?
 - If victim restitution is paid through probation, probation would notify the court, then the court could issue an order that restores civil rights.
 - If victim restitution is paid down, petitioner must ask for an order to restore civil rights once victim restitution is paid in full.
- Who would research if it’s a person’s first felony offense? What if restitution is sent for collection? Could a collection agency notify the court when the debit is paid in full? What about city or county finance departments?
 - There could be a notification provided to the defendant stating that “If first felony conviction, victim restitution must be paid in full before restoration of civil rights, including eligibility to vote.”
 - When a defendant is sentenced, provide them with a notice as part of packet of information that they keep.
 - Mr. Landau asked Tom O’Connell to work with the Probation Division Director, Kathy Waters, to place this information on probation forms.
 - Ms. Sambo Dul, State Elections Director, stated that the Secretary of State’s Office would like to work with the counties to establish consistency of information transfer regarding notification of convictions.

Discuss Potential additional/clean-up legislative proposals *(taken out of order)*

Mr. Landau discussed proposed legislative changes necessary to clean-up recently passed legislation.

HB 2055:

1. In A.R.S. § 8-348(l)(2). strike “...offense for which there has been a finding of sexual motivation pursuant to 13-118.” This provision does not apply to juveniles. This item is tabled until more input is received from prosecutors.

Action Item: Judge Leonard Ruiz will collect input from Maricopa County prosecutors and determine whether they would agree or oppose striking the exclusion for juvenile set aside. (Note: Subsequent to the meeting, Mr. Ruiz informed Mr. Landau that MCAO supports striking the above language).

HB2080:

2. ARS §13-907 A(2) Page 5, Line: 13 - strike “Any” from the first sentence before “...victim restitution that was imposed.”

Motion: Judge Quigley made a motion to make strike “Any” from the sentence dealing with victim restitution in HB2080. **Second:** Judge Antonio Riojas. **Vote:** Passed unanimously.

3. Page 1, Line 1 - Right to possess firearm statute: make a change that *the clerk will transmit the form to the county attorney* and will not charge a fee to match language in other forms.

Motion: Judge Quigley made a motion to make a technical change to require the clerk to submit applications. **Second:** Judge Antonio Riojas. **Vote:** Passed unanimously.

4. In A.R.S. §13-907 K(5) Treatment of minor traffic offenses. ADOT has informed this task force that there is no objection to removing prohibition against setting aside for minor traffic violations.

Motion: Alex Benezra made a motion to allow set aside of minor traffic violations; driving on a suspended license and reckless driving. **Second:** Judge Keith Russell. **Vote:** Passed unanimously.

5. Notify Department of Public Safety of juvenile destruction of records.

Motion: Judge Russell moved to recommend amending appropriate statutes to notify the Department of Public Safety. **Second:** Judge Quigley. **Vote:** Passed unanimously.

6. In A.R.S. § 8-249 strike the words “*gun or*” from statute language.

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

There was further discussion regarding how the juvenile and adult forms would be released to the courts and public. AOC assistant counsel, Jennifer Greene, stated that an administrative order from the Chief Justice would be issued that authorizes the administrative director to publish the forms and make technical changes as needed. The forms would need to be completed within the next year to be adopted by a subsequent rule change.

Future Meetings

The next meeting of this body will be held on September 12, 2019.

Good of the Order/Call to the Public

Mr. Landau made the call to the public at 2:51 p.m. No comment was made.

Adjournment

The meeting adjourned at 2:52 p.m.