

Post-Conviction Actions Task Force Agenda

September 12, 2019; 10:00 a.m. – 3:00 p.m.
 Conference Room 101
 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 June 25, 2019 <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Jerry Landau, Chair</i> <i>AOC Government Affairs</i> <i>Director</i>
10:05 a.m.	 Congratulations to Judge Quigley and Juvenile Adjudication Set Aside Sub-committee “Heart of Justice” Award	<i>Jerry Landau</i> <i>Judge Kathleen Quigley</i>
10:15 a.m.	Discuss legislative proposals <ul style="list-style-type: none"> • Juvenile; restoration of rights • Set Aside (criminal cases) <input type="checkbox"/> <i>Formal Action/Request</i>	<i>Jerry Landau</i>
11:00 a.m.	Statewide memorandum Juvenile Subcommittee report on forms/instructions <ul style="list-style-type: none"> • Application to Set Aside Juvenile Adjudication • Application for Destruction of Records • Application for Restoration of Firearm Rights • Legal Requirements • Notice of Important Rights • Notice from Probation Department re: Destruction of Juvenile Records • Court Order form • Instructions for Setting Aside Adjudication • Instructions for Destruction of Records • Instruction for Restoration of Firearm Rights Report on restoration of civil rights forms/instructions <ul style="list-style-type: none"> • Application to Set Aside Conviction • Application Upon Discharge to: <ul style="list-style-type: none"> <input type="checkbox"/> Restore Civil Rights 	<i>Judge Kathleen Quigley</i> <i>Tom O’Connell</i>

- Restore Firearm Rights
 - Request for Reconsideration to Set Aside Conviction and Restoration of Gun and Firearm Rights
- Notice of Right to Apply to have Conviction Set Aside; Restore Civil Rights; Restore Firearm Rights
- Order Regarding Application to Set Aside Conviction and Restoration of Gun and Firearm Rights
- Order Regarding Application to Restore Civil Rights and Right to Possess or Own Firearms

11:30 p.m. **Juvenile Subcommittee** *Judge Kathleen Quigley*

- Further recommendations or business to be conducted by this subcommittee
- Formal Action/Request*

12:00 p.m. Lunch (Please RSVP - \$5.00 cash)

12:30 p.m. Discuss future rule changes or forms to be developed based on passage of 2020 legislation *Jerry Landau*

Formal Action/Request

1:00 p.m. Implementation of A.R.S. § 13-906(B) *Jerry Landau*

2:00 p.m. Expungement pursuant to A.R.S. § 13-921 *Jerry Landau*

2:15 p.m. Future business *Jerry Landau*

2:30 p.m. Call to the public *Jerry Landau*

2:45 p.m. Future meetings
Good of the Order
Adjournment *Jerry Landau*

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.



August 29, 2019

Dear Judge Quigley and Mr. Kelroy:

I am pleased to inform you that the Administrative Office of the Court's Juvenile Adjudication Set-Aside Subcommittee has been selected to receive the Heart of Justice Award at the 2019 Heart of Justice Reception, the annual celebration hosted by Arizona Legal Women and Youth Services (ALWAYS).

The **Heart of Justice Award** is presented annually to a law firm or organization that has shown a commitment to creating justice for vulnerable young Arizonans. Past recipients include the Arizona Foundation for Legal Services and Education, Perkins Coie, and The Florence Immigration Children's Project. This award is being presented to staff and legal professionals involved with the Juvenile Set Aside Subcommittee because we believe your efforts resulting in House Bill 2055 can lead to greater justice in Arizona for vulnerable youth through greater confidentiality of records, and increased discretion to waive fines and fees so more young adults can pursue the set aside remedy.

We would like to recognize your accomplishments at the Heart of Justice Reception which will be held at the Burton Barr Library on Wednesday November 5th from 5:30 pm to 7:30 pm. We will provide you with five seats at the reception. We ask that you please designate one individual to accept the award and provide brief remarks about your work.

ALWAYS is proud to open the doors to justice for young people who have experienced abuse, homelessness, human trafficking and the foster care system. Once our legal services are within reach, young people in our community have been able to gain employment, achieve legal immigration status, and obtain family court orders that help themselves and their children stay safe. We know, however, that ALWAYS is just one part of a community of individuals and organizations working to create greater opportunity for vulnerable youth in Arizona. We thank you for your work in this mission.

Please contact me at (602) 248-7055 or january@alwaysaz.org with any questions. We look forward to recognizing you and the importance of our collective work on November 5th.

Respectfully and gratefully,

January Contreras
Chief Executive Officer and Managing Attorney

Juveniles; restoration of rights; set aside; destruction of records

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Section 1. 8-202. Jurisdiction of juvenile court

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

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

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

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

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

D. The juvenile court has jurisdiction of proceedings to:

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

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

E. The juvenile court has jurisdiction over both civil traffic violations and offenses listed in section 8-323, subsection B that are committed within the county by persons who are under eighteen years of age unless the presiding judge of the county declines jurisdiction of these cases. The presiding judge of the county may decline jurisdiction of civil traffic violations committed within the county by juveniles if the presiding judge finds that the declination would promote the more efficient use of limited judicial and law enforcement resources located within the county. If the presiding judge declines jurisdiction, juvenile civil traffic violations shall be processed, heard and disposed of in the same manner and with the same penalties as adult civil traffic violations.

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

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

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

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

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

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

20 J. The juvenile court shall retain jurisdiction after a juvenile's eighteenth birthday for the purpose
21 of:

- 22 1. Designating an undesignated felony offense as a misdemeanor or felony, including after an
23 adjudication is set aside pursuant to section 8-348.

24 2. **MODIFYING OUTSTANDING MONETARY OBLIGATIONS IMPOSED BY THE COURT, EXCEPT FOR**
25 **VICTIM RESTITUTION.**

26 K. The juvenile court has jurisdiction to make the initial determination prescribed in section 8-
27 829 whether the voluntary participation of a qualified young adult in an extended foster care
28 program pursuant to section 8-521.02 is in the young adult's best interests.

29 Sec. 2. Section 8-249, Arizona revised statutes, is amended to read:

30 8-249. **Restoration of civil rights; persons adjudicated delinquent**

1 A. A person who was adjudicated delinquent FOR A FELONY and whose period of probation has
2 been completed may have the right to possess or carry a ~~gun or~~ firearm restored by the judge
3 ~~who discharges~~ COURT IN THE COUNTY WHERE the person WAS ADJUDICATED at the end of the
4 person's term of probation OR AS PROVIDED IN SUBSECTION B OF THIS SECTION.

5 ~~B. A person who was adjudicated delinquent and who has been discharged from probation, on
6 proper application, may have the right to carry or possess a firearm restored by the judge of the
7 juvenile court in the county where the person was adjudicated delinquent or the judge's
8 successors. The clerk of the superior court shall process the application on the request of the
9 person involved or the person's attorney. The applicant shall serve a copy of the application on
10 the county attorney.~~

11 ~~C~~ B. If the person's adjudication was for a dangerous offense under section 13-704, a serious
12 offense as defined in section 13-706, burglary in the first degree, burglary in the second degree
13 or arson, the person may not file for the restoration of the right to possess or carry a ~~gun or~~
14 firearm until the person attains thirty years of age. If the person's adjudication was for any other
15 felony offense, the person may not file for the restoration of the right to possess or carry a ~~gun~~
16 ~~or~~ firearm for two years from the date of the person's discharge.

- 17 C. THE CLERK OF THE SUPERIOR COURT SHALL:
- 18 1. PROCESS THE APPLICATION ON THE REQUEST OF THE PERSON INVOLVED OR THE PERSON'S
 - 19 ATTORNEY.
 - 20 2. SERVE A COPY OF THE APPLICATION ON THE COUNTY ATTORNEY.
 - 21 3. NOT CHARGE A FILING FEE FOR THE APPLICATION TO RESTORE THE RIGHT TO POSSESS A
 - 22 FIREARM.

23 **Section 3.** Section 8-348, Arizona revised statutes, is amended to read:

24 **8-348. Setting aside adjudication; application; release from disabilities; exceptions**

25 **A. Except as provided in subsection I of this section, a person who is at least eighteen years of**
26 **age, who has been adjudicated delinquent or incorrigible and who has fulfilled the conditions**
27 **of probation ~~and discharge ordered by the court~~ or who is HAS BEEN discharged from the**
28 **department of juvenile corrections pursuant to section 41-2820 on successful completion of**
29 **the individual treatment plan may apply to the juvenile court to set aside the adjudication.**
30 **The court shall inform the person of this right in writing at the time of the disposition of the**
31 **case.**

1 **B. The person or the person's attorney, probation officer or parole officer may apply to set**
2 **aside the adjudication. The clerk of the court may not charge a filing fee for an application to**
3 **set aside an adjudication. The clerk shall transmit a copy of the application to the county**
4 **attorney in the county where the referral was made.**

5 **C. The court may consider the following factors when determining whether to set aside an**
6 **adjudication:**

7 **1. The nature and circumstances of the offense on which the adjudication is based.**

8 **2. Whether the person has been convicted of a felony offense.**

9 **3. Whether the person has any pending criminal charges.**

10 **4. The victim's input.**

11 **5. Any other factor that is relevant to the application.**

12 **D. Except as provided in subsection F of this section, if the court grants the application, the**
13 **court shall set aside the adjudication, dismiss the petition and order that the person be**
14 **released from all penalties and disabilities resulting from the adjudication except those**
15 **imposed by the department of transportation pursuant to section 28-3304, 28-3306, 28-3307,**
16 **28-3308 or 28-3319.**

17 **E. On a showing of good cause, the court may modify any monetary obligation ~~that is owed by~~**
18 **~~the person~~ IMPOSED BY THE COURT** except for victim restitution.

19 **F. If the court grants an application, any remaining unpaid monetary obligation continues to be**
20 **owed and is subject to the remedies included in sections 8-344 and 8-345 until the monetary**
21 **obligation is paid.**

22 **G. If the court denies an application, the court shall state its reasons for the denial in writing.**

23 **H. If a victim has made a request for post adjudication notice, the victim has the right to be**
24 **present and heard at any hearing on the application. The state shall provide the victim with**
25 **notice of the application and of the rights provided to the victim in this section.**

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

28 **1. A dangerous offense as defined in section 13-105.**

29 ~~**2. An offense for which there has been a finding of sexual motivation pursuant to section 13-**~~
30 ~~**118.**~~

31 ~~**3**~~ **2. An offense in violation of title 13, chapter 14.**

1 **43. An offense in violation of section 28-1381, 28-1382, or 28-1383 if the offense can be alleged**
2 **as a prior violation pursuant to title 28, chapter 4.**

3 **54. An offense for which the person has not paid in full the victim restitution ordered by the**
4 **court.**

5 Sec. 4. Section 8-349, Arizona revised statutes, is amended to read:

6 **8-349. Destruction of juvenile records; electronic research records; definition**

7 A. A person who is at least eighteen years of age and who has been adjudicated delinquent or
8 incorrigible may apply for destruction of the person's juvenile court and department of juvenile
9 corrections records if the records involve an adjudication for an offense other than an offense
10 listed in section 13-501, subsection A or B or title 28, chapter 4.

11 B. The person shall attest to all of the following in the application:

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

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

15 3. A criminal charge is not pending.

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

19 5. All restitution is paid in full.

20 6. The person is not under the jurisdiction of the juvenile court or the department of juvenile
21 corrections.

22 7. The person is not currently required to register pursuant to section 13-3821.

23 8. The person has either paid all monetary obligations in full or has requested the court to modify
24 the outstanding monetary obligations pursuant to subsection K of this section.

25 C. The juvenile court may order the destruction of records under subsection A of this section if
26 the court finds all of the following:

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

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

29 3. A criminal charge is not pending.

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

- 1 5. The person successfully completed the terms and conditions of probation or was discharged
- 2 from the department of juvenile corrections pursuant to section 41-2820 on successful
- 3 completion of the individual treatment plan.
- 4 6. All restitution is paid in full.
- 5 7. All monetary obligations are either paid in full or have been modified pursuant to subsection
- 6 K of this section.
- 7 8. The person is not under the jurisdiction of the juvenile court or the department of juvenile
- 8 corrections.
- 9 9. The person is not currently required to register pursuant to section 13-3821.
- 10 D. A person who is not eligible to have the person's records destroyed pursuant to subsection A
- 11 of this section may apply to have the person's juvenile court and department of juvenile
- 12 corrections records destroyed pursuant to subsection E of this section. The person shall attest to
- 13 all of the following in an application:
 - 14 1. The person is at least twenty-five years of age.
 - 15 2. The person has not been convicted of a felony offense.
 - 16 3. A criminal charge is not pending.
 - 17 4. All restitution is paid in full.
 - 18 5. The person has either paid all monetary obligations in full or has requested the court to modify
 - 19 the outstanding monetary obligations pursuant to subsection K of this section.
 - 20 6. The person is not currently required to register pursuant to section 13-3821.
- 21 E. The juvenile court may order the destruction of records if the court finds that all of the
- 22 following apply to a person who files an application pursuant to subsection D of this section:
 - 23 1. The person is at least twenty-five years of age.
 - 24 2. The person has not been convicted of a felony offense.
 - 25 3. A criminal charge is not pending.
 - 26 4. All restitution is paid in full.
 - 27 5. All monetary obligations are either paid in full or have been modified pursuant to subsection
 - 28 K of this section.
 - 29 6. The person is not currently required to register pursuant to section 13-3821.
 - 30 7. The destruction of the records would further the rehabilitative process of the applicant.

- 1 F. The juvenile court and the department of juvenile corrections may store any records for
2 research purposes.
- 3 G. At the juvenile's disposition hearing, the court shall inform the juvenile, in writing, of the right
4 to the destruction of the juvenile's court and department of juvenile corrections records.
- 5 H. The clerk of the court may not charge a filing fee for the application to destroy juvenile records.
- 6 I. The clerk of the court shall transmit a copy of an application submitted pursuant to this section
7 to the county attorney in the county in which the referral was made.
- 8 J. The county attorney may file an objection to an application that is submitted pursuant to this
9 section for the destruction of records.
- 10 K. On a showing of good cause, the court may modify any monetary obligation **IMPOSED BY THE**
11 **COURT** except for victim restitution.
- 12 L. The juvenile court, the clerk of the superior court and the juvenile probation department, on
13 notification by the probation department, shall destroy the records that concern a referral or
14 citation that did not result in further action or that resulted in a successful completion of
15 diversion within ninety days after the person who was the subject of the referral or citation
16 reaches eighteen years of age. The probation department shall send a copy of the notice to the
17 department of public safety central state repository.
- 18 M. Within six months after receiving a notification from the superior court that a person's juvenile
19 delinquency or incorrigibility records were destroyed, the department of child safety shall
20 destroy all court, juvenile probation and department of juvenile corrections records that are in
21 the department of child safety's possession and that were produced in the delinquency or
22 incorrigibility matter.
- 23 **N. THE CLERK OF THE COURT MUST NOTIFY THE DEPARTMENT OF PUBLIC SAFETY IF A PERSON'S**
24 **RECORD IS DESTROYED.**
- 25 ~~N~~ O. For the purposes of this section, "successfully" means, in the discretion of the court, the
26 person satisfied the conditions of probation.

8/30/19
4:26 pm

Setting aside judgment; restoration of rights

1 Sec. 1. Section 13-905, Arizona revised statutes, is amended to read:

2 13-905. Setting aside judgment of convicted person on discharge; application; release from
3 disabilities; firearm possession; exceptions

4 A. Except as provided in subsection K of this section, every person convicted of a criminal offense,
5 on fulfillment of the conditions of probation or sentence and discharge by the court, may apply
6 to the court to have the judgment of guilt set aside. The convicted person shall be informed of
7 this right at the time of sentencing.

8 B. The person or the person's attorney or probation officer may apply to set aside the judgment.
9 The clerk of the court may not charge a filing fee for an application to have a judgment of guilt
10 set aside.

11 C. The court shall consider the following factors when determining whether to set aside the
12 conviction:

- 13 1. The nature and circumstances of the offense that the conviction is based on.
- 14 2. The applicant's compliance with the conditions of probation, the sentence imposed and any
15 state department of corrections' rules or regulations, if applicable.
- 16 3. Any prior or subsequent convictions.
- 17 4. The victim's input and the status of victim restitution, if any.
- 18 5. The length of time that has elapsed since the completion of the applicant's sentence.
- 19 6. The applicant's age at the time of the conviction.
- 20 7. Any other factor that is relevant to the application.

21 D. If the application is granted, the court shall set aside the judgment of guilt, dismiss the
22 complaint, information or indictment and order that the person be released from all penalties
23 and disabilities resulting from the conviction except those imposed by:

- 24 1. The department of transportation pursuant to section 28-3304, 28-3305, 28-3306, 28-3307,
25 28-3308, 28-3312 or 28-3319.
- 26 2. The game and fish commission pursuant to section 17-314 or 17-340.

27 E. A conviction that is set aside may be:

- 28 1. Used as a conviction if the conviction would be admissible had it not been set aside.
- 29 2. Alleged as an element of an offense.
- 30 3. Used as a prior conviction.

- 1 4. Pleaded and proved in any subsequent prosecution of the person by this state or any political
2 subdivision of this state for any offense.
- 3 5. Used by the department of transportation in enforcing section 28-3304, 28-3305, 28-3306,
4 28-3307, 28-3308, 28-3312 or 28-3319 as if the judgment of guilt had not been set aside.
- 5 F. The clerk of the court must notify the department of public safety if a conviction is set aside.
6 The department of public safety must update the person's criminal history with an annotation
7 that the conviction has been set aside but may not redact or remove any part of the person's
8 record.
- 9 G. This section does not:
- 10 1. Require a law enforcement agency to redact or remove a record or information from the
11 record of a person whose conviction is set aside.
- 12 2. Preclude the department of public safety or the board of fingerprinting from considering a
13 conviction that has been set aside when evaluating an application for a fingerprint clearance card
14 pursuant to section 41-1758.03 or 41-1758.07.
- 15 H. If the court denies an application to have a judgment of guilt set aside, the court shall state
16 its reasons for the denial in writing and on the record.
- 17 I. A victim has the right to be present and be heard at any proceeding in which the defendant
18 has filed an application to have a judgment of guilt set aside pursuant to this section. If the victim
19 has made a request for postconviction notice, the attorney for the state shall provide the victim
20 with notice of the defendant's application and of the rights provided to the victim in this section.
- 21 J. Notwithstanding section 13-910, if a conviction is set aside, the person's right to possess a
22 firearm is restored. This subsection does not apply to a person who was convicted of a serious
23 offense as defined in section 13-706.
- 24 K. This section does not apply to a person who was convicted of any of the following:
- 25 1. A dangerous offense.
- 26 2. An offense for which the person is required or ordered by the court to register pursuant to
27 section 13-3821.
- 28 3. An offense for which there has been a finding of sexual motivation pursuant to section 13-118.
- 29 4. A felony offense in which the victim is a minor under fifteen years of age.

1 ~~5. An offense in violation of section 28-3473, any local ordinance relating to stopping, standing~~
2 ~~or operation of a vehicle or title 28, chapter 3, except a violation of section 28-693 or any local~~
3 ~~ordinance relating to the same subject matter as section 28-693.~~

4 Sec. 2. Section 13-905, Arizona revised statutes, is amended to read:

5 **13-907. Automatic restoration of civil rights for first offenders; exception; definition**

6 **A. On final discharge, any person who has not previously been convicted of a felony offense**
7 **shall automatically be restored any civil rights that were lost or suspended as a result of the**
8 **conviction if the person pays ~~any~~ ALL victim restitution imposed.**

9 **B. A person who is entitled to the restoration of any civil rights pursuant to this section is not**
10 **required to file an application ~~pursuant to section 13-908~~ FOR RESTORATION OF CIVIL RIGHTS.**

11 **C. This section does not apply to a person's right to possess a firearm as defined in section 13-**
12 **3101. The court may order the restoration of the right to possess a firearm pursuant to section**
13 **13-910.**

14 **D. For the purposes of this section, "final discharge" means the completion of probation or the**
15 **receipt of an absolute discharge from the state department of corrections or the United States**
16 **bureau of prisons.**

17 Section 3. Section 13-906, Arizona revised statutes, is amended to read:

18 **13-906. Restoration of civil rights; process**

19 **A. At the time of sentencing, the court shall inform a person in writing of the person's right to the**
20 **restoration of civil rights.**

21 **B. The clerk of the court shall notify the department of public safety if the court restores the**
22 **person's civil rights PURSUANT TO SECTION 13-908, including whether a person's right to possess**
23 **a firearm is restored. The department of public safety shall update the person's criminal history**
24 **with an annotation that the person's civil rights have been restored and any exceptions ordered**
25 **but may not redact or remove any part of the person's record.**

26 **C. The restoration of a person's civil rights does not preclude the department of public safety or**
27 **the board of fingerprinting from considering a conviction of a person whose civil rights have been**
28 **restored when evaluating an application for a fingerprint clearance card pursuant to section 41-**
29 **1758.03 or 41-1758.07.**

30 **D. If the court denies an application for the restoration of a person's civil rights, the court shall**
31 **state its reasons for the denial in writing.**

1 E. If the restoration of a person's civil rights is discretionary with the court, a victim has the right
2 to be present and be heard at any proceeding in which the defendant files an application for the
3 restoration of civil rights. If the victim has made a request for postconviction notice, the attorney
4 for the state shall provide the victim with notice of the defendant's application and of the rights
5 provided to the victim in this section.

9/3/19

12:23 pm



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

MEMORANDUM

To: Superior Court Presiding Judges
Clerks of Superior Court
Superior Court Administrators
Juvenile Court Judges
Juvenile Court Administration
Juvenile Probation

Cc: Court Services

From: Marcus W. Reinkensmeyer, Court Services Director

Date: August 15, 2019

**RE: New Juvenile and Adult Forms – Implementation of HB2055 and HB2080 –
Effective August 27, 2019**

This memorandum is one in a two-part series addressing implementation of juvenile court and adult court forms.

In 2018, the Post-Conviction Actions Task Force developed legislative proposals to update the procedures involved in setting aside adjudications, requesting destruction of records, and restoration of firearm rights in juvenile delinquency and incorrigibility matters, and setting aside of convictions, restoration of civil rights, and restoration of right to possess a firearm in adult court matters. The legislation was enacted as Laws 2019, Ch. 125 ([HB2055](#)) and Ch. 149 ([HB2080](#)) and becomes effective on August 27, 2019.

The Task Force also developed statutorily-compliant applications, instructions, notices, and order forms for use by the public and the juvenile courts in processing these juvenile court matters. The following forms are also available at:

<https://www.azcourts.gov/selfservicecenter/Juvenile-Law/Juvenile-Law-Forms>

- [Application to Set Aside Juvenile Adjudication](#)
- [Application for Destruction of Juvenile Records](#)
- [Application to Restore Firearm Rights](#)
- [Legal Requirements for Destruction of Juvenile Records, Set Aside Adjudication, and Restoration of Right to Possess a Firearm](#)
- [Notice of Important Rights](#)

- [Order Regarding Application \[\] Modify Monetary Obligations \[\] Destruction of Juvenile Records \[\] Set Aside Juvenile Adjudication \[\] Restoration of Firearm Rights](#)
- [Instructions – Setting Aside Juvenile Adjudication](#)
- [Instructions – Destruction of Juvenile Court Records](#)
- [Instructions – Restoration of Firearm Rights](#)
- [Notice for Destruction of Juvenile Court Records \(from Juvenile Probation Officer\)](#)

This legislation also added the requirement that courts inform defendants in writing of their right to the restoration of civil rights at the time of sentencing in adult court. The following form was developed by the Task Force that may be used to provide notice at the time of sentencing. It is also available at: <https://www.azcourts.gov/selfservicecenter/Criminal-Law/Criminal-Forms>

- [Notice of Right to Apply to Have Conviction Set Aside; Restore Civil Rights and Right to Possess a Firearm](#)

Finally, Rule Petition [R-19-0038](#) will be heard by the Supreme Court prior to the August 27, 2019 effective date. This rule petition requests, among other things, amendment to the associated application forms and order forms for adult court matters. After the Supreme Court hears, amends, and adopts the Rules of Criminal Procedure, a second statewide memorandum will be distributed with the revised adult court forms.

If you have any questions regarding the new procedures or forms, please contact Kathy Sekardi at ksekardi@courts.az.gov or Tom O’Connell, Pretrial Services Manager, at toconnell@courts.az.gov.

Thank you,

Marcus W. Reinkensmeyer

Director, Court Services Division
 1501 W. Washington
 Phoenix, AZ 85007
 602.452.3334
 602.452.3480 (fax)

Wanda Roberson

Administrative Assistant III
 Court Services Division
 Arizona Supreme Court
 1501 W. Washington, Ste. 410
 Phoenix, AZ 85007
 (602) 452-3196
wroberson@courts.az.gov

1 13-921. Probation for defendants under eighteen years of age;
2 dual adult juvenile probation

3 A. The court may enter a judgment of guilt and place the
4 defendant on probation pursuant to this section if all of the
5 following apply:

6 1. The defendant is under eighteen years of age at the time
7 the offense is committed.

8 2. The defendant is convicted of a felony offense.

9 3. The defendant is not sentenced to a term of
10 imprisonment.

11 4. The defendant does not have a historical prior felony
12 conviction.

13 B. If the court places a defendant on probation pursuant to
14 this section, all of the following apply:

15 1. Except as provided in paragraphs 2, 3 and 4 of this
16 subsection, if the defendant successfully completes the terms
17 and conditions of probation, the court may set aside the
18 judgment of guilt, dismiss the information or indictment,
19 expunge the defendant's record and order the person to be
20 released from all penalties and disabilities resulting from the
21 conviction. The clerk of the court in which the conviction
22 occurred shall notify each agency to which the original
23 conviction was reported that all penalties and disabilities have
24 been discharged and that the defendant's record has been
25 expunged.

26 2. The conviction may be used as a conviction if it would
27 be admissible pursuant to section 13-703 or 13-704 as if it had
28 not been set aside and the conviction may be pleaded and proved
29 as a prior conviction in any subsequent prosecution of the
30 defendant.

31 3. The conviction is deemed to be a conviction for the
32 purposes of sections 28-3304, 28-3305, 28-3306 and 28-3320.

33 4. The defendant shall comply with sections 13-3821 and 13-
34 3822.

35 C. A defendant who is placed on probation pursuant to this
36 section is deemed to be on adult probation.

37 D. If a defendant is placed on probation pursuant to this
38 section, the court as a condition of probation may order the
39 defendant to participate in services that are available to the
40 juvenile court.

41 E. The court may order that a defendant who is placed on
42 probation pursuant to this section be incarcerated in a county
43 jail at whatever time or intervals, consecutive or
44 nonconsecutive, that the court determines. The incarceration
45 shall not extend beyond the period of court ordered probation,
46 and the length of time the defendant actually spends in a county
47 jail shall not exceed one year.

1 F. In addition to the provisions of this section, the court
2 may apply any of the provisions of section 13-901.
3