

Post-Conviction Actions Task Force Draft Minutes

Tuesday, August 20, 2018

Established by A.O. No. 2018-52

Present: Jerry Landau, Chair; Kurt Altman; Cathy Clarich; Kirstin Flores; Judge John Hudson; Donald Jacobson; Jeremy Mussman; Judge Sam Myers; Aaron Nash; Tom O’Connell; Judge Kathleen Quigley; Judge Antonio Riojas; Lisa Royal; Leonard Ruiz; Amber Sliwinski; Mikel Steinfeld; Kent Volkmer

Appearing Telephonically: Alex Benezra (*until 12:30*); Ryan Glover; Judge Margaret McCullough (*until 1:30*); Judge Keith Russell (*after 1:37*)

Absent: Julie Ahlquist; Colleen Clase; Mirisue Galindo; Will Gaona; Kathy Waters

Presenters/Guests: Beth Broeker; Cheryl Clark; Anthony Coulson; Jennifer Greene; Sandra Hunter; Chris Phillis; Beth Rosenberg

Staff: Kathy Sekardi; Susan Pickard

Welcome and Opening Remarks

With a quorum present, Jerry Landau, Chair, welcomed the members. Self-introductions were made by all who were in attendance either in person or on the telephone. Then Mr. Landau laid out his goal of finalizing the statutes and forms related to the recommendations of the PCA Juvenile Adjudication Set Aside Subcommittee. He noted that he would be conducting two “Call to the Public” comment periods: one before lunch and one before the meeting’s adjournment.

Minutes

Mr. Landau presented the minutes of the July 10, 2018, meeting of the Task Force for approval.

Motion: To approve the minutes of July 10, 2018, as presented by Aaron Nash. **2nd:** Kurt Altman

Vote: Passed unanimously.

Review Recommendations of the Juvenile Adjudication Set Aside Subcommittee

Judge Quigley began by thanking the members of the Subcommittee for their efforts in developing the recommendations. Her honor presented the recommendations highlighting:

- Allow the court to retain jurisdiction until the juvenile is age 19, if adjudicated for an undesignated class 6 felony, and
- 13-912.01 has two issues that need to be addressed:
 - Paragraph A states, juveniles who have been “adjudicated delinquent” which encompasses felonies and misdemeanors. The statute is out of date. Only a juvenile

who has been adjudicated delinquent for a felony loses his/her right to possess a firearm.

- the amount of time a person who has lost the right to possess a firearm must wait to apply differs greatly between adults (after 10 years) and juveniles (age 30).
- Change the record retention schedule to retain juvenile records for 60 years.
- Investigate presumptive records sealing for juveniles who meet certain criteria.
- Provide judicial officer training regarding:
 - The loss of right to possess a firearm and verbal and written notice to the juvenile.
 - The impact of a short stay at the Arizona Department of Juvenile Corrections. If a juvenile court judge sends a juvenile to ADJC, but there is not sufficient time for the staff to process and determine a treatment program for the youth (30 days), that youth may not have the time to meet ADJA's requirements before being discharged. This prevents the youth from obtaining an absolute discharge from ADJC. An absolute discharge impacts the time needed for the youth to have rights restored, adjudications set aside, or records sealed.
 - The clearance of criminal history and fingerprints. If a youth is charged as an adult and the case handled by the Superior Court, the youth is fingerprinted. If that case is later reverse transferred to the juvenile court or the prosecutor dismisses the adult charges and decides to prosecute the youth as a juvenile, the fingerprints remain accessible in the adult criminal history record. The Department of Public Safety has shared an email address that can be used to submit minute entries regarding the reverse transfer or dismissal, so DPS can clear that information from the criminal history records.

Statutes

Mr. Landau walked the members through the proposed statutory amendments that were drafted to capture the Subcommittee's recommendations, remove antiquated language, and reorganize.

§8-202 Section (D)(3) would allow the retention of jurisdiction until age 19 in cases where the person was adjudicated delinquent for an undesignated class 6 felony.

No concerns noted.

§8-341 Along with minor grammatical corrections, section R was moved to §8-431(B) would allow the consolidation of all sections relating to the prohibition of a person adjudicated delinquent to carry or possess a firearm in one section.

No concerns noted.

§8-348

- Adds conforming language regarding section 8-202 and retention of jurisdiction.
- Requires the court to inform the juvenile of the right to apply to set aside the adjudication in writing at the time of disposition.
- Prohibits a filing fee for the application.
- Defines the factors that the court must consider.
- Identifies when a set-aside adjudication may be used.
- Requires the court to state its reasons for denying the set aside in writing and on the record.
- Requires victim post adjudication notification, if requested.
- Prohibits set aside for certain offenses.

- Allows the court to designate an undesignated class 6 felony.

Concerns/Comments:

- Is “adjudicated incorrigible” an antiquated term? No, it is still in use.
- Does the requirement that the court notify the juvenile of the right to apply for set aside at disposition work within court processes and procedures?
 - Processes and procedures will be developed internally. Requiring the court to make the notification means the notification will be centrally located, rather than with probation and ADJC, and the notification will be standardized. Perhaps the notice could be included in the standardized probation terms and commitment order.
- Are juveniles put on “parole?” Section (C)(2) change “parole” to “conditional liberty”
- Add “those imposed by” after “except” in (D) and remove that same language at the beginning of (D)(1).
- Section (E) change “A conviction” to “An adjudication.”
- Section (F) delete second sentence.
- Section (I) change “the attorney for the state” to “the state.”
- There is no definition of “successful” or “satisfactorily,” therefore these terms have been removed.
- Section (J) how can a person apply based upon a court finding? The court shall not grant an application to set aside, if. . . a dangerous or serious offense subsequent to 18. . .”
 - Delete (J)
 - Add “or convicted” after “who was adjudicated delinquent”
- Section (A) change “if jurisdiction is extended” to “if jurisdiction is retained”

Action Item: Mr. Landau to address (K)(5) with ADOT.

§3-348.01 Allows the court to designate an undesignated class 6 felony.

Concerns/Comments:

Change “adjudicated of” to “adjudicated for” and “defendant” to “person”

§8-349 Sections (B) and (C) – Age 18 or 19

- Section (B)(4) and (C)(5) delete “satisfactorily” and “all of”
- Section (B) “The person shall certify under oath. . .” A person cannot certify, but he/she can avow.
- Section (B)(5) change to read: “All victim restitution owed by the person has been paid in full, or that extenuating circumstances exist and sealing the records is in the interests of justice.” Because restitution is addressed separately in code, it is not included in the term of probation or commitment to ADJC.
- Need to address extenuating circumstances and moneys owed by persons other than the juvenile.
- Do not create a victim right for sealing but maintain for set-aside.

Call to the Public

A call to the public was made at 12:26 p.m. No comment was made.

Review Recommendations of the Juvenile Adjudication Set Aside Subcommittee (Continued.)

§8-349 Sections (D) and (E) – Age 21

- Sections (D)(5) and (E)(5) change to mirror (C)(5)
- Section (D) change “serve” to “provide” – In all other instances of requiring the juvenile to serve the application change “served” to “provide.”
- Because the records are currently destroyed, (I)(3) and (4) broaden access to the record through the juvenile.

§8-431 **Concerns/Comments:**

- Section (A) and (B) delete “pursuant to Title 8, Chapter 3”
- Sections (C) and (D) were redrafted to read:
 - “C. A person who was adjudicated delinquent for a felony who has been discharged from probation or from the department of juvenile corrections pursuant to section 41-2820 on successful completion of the individualized treatment plan may apply after **two years** from the date of discharge or release or escape from custody to the juvenile court in the county where the juvenile was adjudicated delinquent to have the right to carry or possess a firearm restored. This subsection does not apply to a person who was adjudicated delinquent for any of the following offenses:
 1. a dangerous offense as defined in section 13-704,
 2. a serious offense or a violent or aggravated offense as defined in section 13-706,
 3. burglary in the second degree,
 4. arson.
 - D. The clerk of the superior court shall process the application on the request of the person involved or the person's attorney. the applicant shall provide a copy of the application to the prosecutor.”
- Section (F) was redrafted to read:
 - “The person’s right to possess a firearm under this section, if not previously restored, is restored **ten years** from the date of adjudication or release or escape from custody.”
- Add section that discusses what an “extenuating circumstance” might be.
- Add victim notification section.
- Remove the term “gun;” use only “firearm.” In statute and on forms and in instructions.

§13-3113 **Concerns/Comments:**

- A juvenile does not have a right to carry, so “carry or” should be removed from the first sentence.

Redrafted to read:

“A person who was previously adjudicated delinquent for an offense and whose right to possess a firearm is not restored is guilty of a class 5 felony for a first offense and a class 4 felony for a second or subsequent offense.”

§13-3101 Requires further review regarding “civil.”

Motion: Subject to further edits, recommend by Judge Myers. 2nd: Judge Quigley Vote: Passed unanimously.
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Forms and Instructions

Judge Quigley presented regarding set aside, sealing, and restoration of firearms forms and instructions.

Comments/Concerns:

- The caption of the set aside application form should read: “Application to Set Aside a Juvenile Adjudication and Restore Right to Possess a Firearm”
- In the instructions add “at least 18 or 19”
- Split application to seal from application to set aside
- Include monetary obligations with restitution payments as the same extenuating circumstances may apply to both. Additionally, the statute should reference monetary obligations. The sealed and set aside actions should mirror each other regarding financial obligations.
- Make room to explain the extenuating circumstances.
- Endorse any law enforcement agency on the order, so that they may consider records management.

Action Item: Mr. Landau asked Tom O’Connell and the Forms Subcommittee to review and make technical and conforming changes as needed.

Entering and removal of juvenile adjudications into NICS

Mr. Landau introduced Anthony Coulson, a consultant to the Arizona Criminal Justice Commission (ACJC) and to the NICS Task Force. There is a statutory requirement, that states if a person is a prohibited possessor, data about that person must be transferred into the National Instant Criminal System (NICS). The Task Force, with input from stakeholders, has made several recommendations. One of the major recommendations that involved the courts was the inclusion of all mental health adjudications being included in the NICS indexes. These adjudications are automatically transmitted to NICS. Other issues that have been or are being addressed by the NICS Task Force include felony conviction, indictments, verified complaints, active warrants, drug use, mental health, orders of protection, and domestic violence.

Recently and purely by accident, the FBI discovered that no one outside of the courts and DPS were aware of the prohibited possessor status of juveniles with felony adjudications. Currently, a juvenile who was adjudicated for a serious or dangerous offense, has not had the right to possess a firearm restored, and seeks to purchase a firearm, will pass the background check conducted by a retailer who has a Federal Firearm License (FFL). Arizona needs to correct this reporting.

The NICS Task Force is recommending that the same method used with the mental health adjudications be used for reporting prohibited possessor status of a juvenile with a felony adjudication. Once the rules for reporting to and removal from the indexes as well as the nuances and implications are determined, the next step is to determine how far back in the records should reporting go? ACJA working with the AOC make these determinations.

Comments/Concerns:

- How much information can an FFL see?
 - An FFL receives only a deny, delay, or proceed response and cannot see any data.
- Once this is put into place, a person who has a juvenile felony adjudication and continues to be a prohibited possessor, will be blocked from purchasing a firearm and protected from committing that crime.

Discuss pending rule change petition re: Criminal Rules 24.3(c)(3)

This discussion was tabled until the September meeting.

Good of the Order/Call to the public

Mr. Landau made the second call to the public. No comments were made.

The agenda for the September meeting will include

- Discuss pending rule change petition re: Criminal Rules 24.3(c)(3)
- Vote to finalize juvenile records sealing, adjudication set aside, and restoration of firearm statutes, forms, and instructions
- Discuss diversion
- Discuss restoration of civil rights

Mr. Landau proposed an October 17, 2018, 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.
Conference Rooms 329 & 330