

Post-Conviction Actions Task Force Minutes

Thursday, September 13, 2018

Established by A.O. No. 2018-52

Present: Jerry Landau, Chair; Julie Ahlquist; Kurt Altman; Alex Benezra; Cathy Clarich; Colleen Clase; Mirisue Galindo; Ryan Glover; Judge John Hudson; Jeremy Mussman; Judge Sam Myers; Aaron Nash; Tom O'Connell; Judge Antonio Riojas; Lisa Royal; Leonard Ruiz; Amber Sliwinski; Mikel Steinfeld; Kent Volkmer

Appearing Telephonically: Donald Jacobson; Judge Kathleen Quigley

Absent: Kirstin Flores; Will Gaona; Judge Margaret McCullough; Judge Keith Russell; Kathy Waters

Presenters/Guests: Anthony Coulson, Jennifer Greene, Dee Podesky; Cheryl Clark, ACLU People Power; Lynn Rencarte

Staff: Jennifer Albright; 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.

Minutes

Mr. Landau presented the minutes of the August 20, 2018, meeting of the Task Force for approval.

Discussion:

1. Anthony Coulson's name was misspelled at the beginning of his presentation.
2. Alex Benezra indicated that he left the meeting at lunch.
3. Jeremy Mussman indicated that a significant discussion related to hardships caused by A.R.S §§13-3113 and 13-1301 had been omitted. Mr. Mussman later withdrew his objection to the minutes as the discussion reoccurred later in this meeting.

The approval of the minutes was tabled until the October 17, 2018 meeting.
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Pending Rule Change Petition Re: Criminal Rule 24.3(c)(3) – Public Benefits and Victims' Rights

Because discussion was ongoing regarding the draft rule, the agenda item was tabled until the October 17, 2018, meeting.

Review Recommendations of the PCA Juvenile Adjudication Set Aside Subcommittee

The discussion of the subitems for this agenda item were taken out of the published agenda order.

A.R.S. 8-348.01 – Class 6 Undesignated Felony

The proposed draft was amended to repeal subsection (D)(3) and add a new subsection (E).

Motion: To move the proposed legislative amendments regarding class 6 undesignated felonies forward to the Arizona Judicial Council for consideration by Judge Myers. **Second:** Judge Quigley
Vote: Pass unanimously.

A.R.S. §§ 8-431, 8-341, 13-912.01, and 13-3113 – Firearms Possession

The discussion regarding the statutory amendments to do with firearms resulted in adding “an offense if committed by an adult would be” as appears in 8-431(A) to (C) and making the transmission of a copy of the application to the county attorney the responsibility of the clerk of the court.

The discussion comparing current A.R.S. §§ 13-912.01 and 13-3113 highlighted a need for standardization of the timeline.

New ideas were offered to develop the best law from prosecutor, law enforcement and court perspectives. Ultimately, the consensus was this policy issue may be best brought forward by another agency.

Motion: To table the discussion about firearm restoration timelines indefinitely by Judge Riojas.
Second. Mr. Ruiz. **Vote:** Passed unanimously.

A.R.S. § 8-348 – Setting Aside Adjudication

Judge Quigley noted that the subcommittee members discussed the possible repeal of this section but had not developed its recommendation. Members shared input on reasons in support of repeal and reasons against repeal.

There was also discussion regarding the proposed factors in subsection C. The discussion led to an action item for the PCA-Juvenile Set Aside Subcommittee.

Action Item: The PCA Juvenile Adjudication Set Aside Subcommittee was asked to develop proposed language for subsection C and identify its impact on the form, instructions, and legal requirements document.

Discuss Automatic Restoration of Civil Rights

After discussing the handouts provided, Mr. Landau presented his proposal. The members shared input regarding §§ 13-910(B) and 13-911(B) and clarification of the meaning of “civil rights” in the context of the discussion and proposals.

Mr. Mussman also presented a proposal on the topic of automatic restoration of civil rights for second or subsequent offenses. That proposal involved a significant policy change.

Bill Montgomery, Maricopa County Attorney, was present and shared his comments regarding the restoration of civil rights.

Additional discussion ensued and included comments about democratic processes, requirements that need to be met to return to full participation in a democratic society, and the disparate impact on the poor when a society requires strict compliance with monetary consequences for breaking societal rules.

The Chair asked for a straw poll. The **consensus of the members (9-8-1)** was to continue the discussion about restoration of civil rights.

Call to the Public

Mr. Landau made his first call to the public, to hear any input that may have an impact on a vote or further discussion. Dee Podesky; Cheryl Clark, ACLU People Power; and Lynn Rencarte spoke.

Discuss Automatic Restoration of Civil Rights (continued)

Having voted to proceed with automatic restoration of civil rights for first offenses during the July meeting, the **consensus of the members (8-7-1)** was to proceed with automatic restoration for second and subsequent offenses.

Review Recommendations of the PCA Juvenile Adjudication Set Aside Subcommittee (continued)

A.R.S. §8-349 – Sealing of juvenile records

Judge Quigley noted that sealing a juvenile's record allows future access of the record for job/career related background checks and continued victim restitution payments.

Comments/Concerns:

1. The removal of "successful" removes a carrot that encourages compliance.
2. "Successful" is not well defined.

Action Item: The PCA Juvenile Adjudication Set Aside Subcommittee was asked to reconsider the use of the term "successful" in § 8-349.

Good of the Order/Call to the Public

Mr. Landau discussed the agenda for the October meeting which will include:

- Discussion about
 - pending rule change petition re: Criminal Rules 24.3(c)(3)
 - diversion
 - restoration of civil rights
 - the impact of purging records on the set aside issue
- Vote finalize juvenile adjudication set aside; sealing of juvenile records, and restoration of firearm statutes, forms, and instructions.

Leonard Ruiz asked that digital versions of the documents provided by Jeremy Mussman, including the September 11 draft proposed legislation be shared with the task force.

The second call to the public was made. No comment was made.

Adjournment

The meeting adjourned at 3:06 p.m.

Next Meeting:

Thursday, October 17, 2018 - 10:00 a.m. to 3:00 p.m. - Conference Rooms 345 A&B