

Post-Conviction Actions Task Force Minutes

Thursday, October 17, 2018

Established by A.O. No. 2018-52

Present: Jerry Landau, Chair; Julie Ahlquist; Kurt Altman; Alex Benezra; Cathy Clarich; Mirisue Galindo; Jeremy Mussman; Aaron Nash; Tom O’Connell; Judge Kathleen Quigley; Judge Antonio Riojas; Lisa Royal; Leonard Ruiz; Judge Keith Russell; Mikel Steinfeld; Kent Volkmer; Kathy Waters

Appearing Telephonically: Colleen Clase, Donald Jacobson

Absent: Kirstin Flores, Will Gaona, Ryan Glover, Judge John Hudson, Judge Margaret McCullough, Judge Sam Myers, Amber Sliwinski

Juvenile Adjudication Set Aside Subcommittee Members Present: Joseph Kelroy, Eric Meaux, Christina Phillis

Presenters/Guests: Jeff Cappelli, Victor Cervantes, Jr., Cheryl Clark, Anthony Coulson, Joel Edman, Art Glenberg, Karen Nielsen, Virginia Metz, Gordon Metz

Staff: Kathy Sekardi; Susan Pickard and Theresa Barrett, Jennifer Greene, David Withey

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 explained the goals for the PCA Juvenile Adjudication Set Aside Subcommittee draft legislation, forms and instructions, late breaking legislative proposals from Maricopa, and restoration of rights.

Minutes

Mr. Landau presented the minutes of the September 13, 2018, meeting of the Task Force for approval.

<p>Motion: To approve the minutes of the September 13, 2018 meeting by Judge Riojas. Second: Jeremy Mussman. Vote: Passed unanimously.</p>

Discuss PCA Juvenile Adjudication Set Aside Subcommittee Legislative Drafts

Judge Quigley thanked the subcommittee members, all of whom are well-versed in juvenile law, for sharing their expertise and time.

A.R.S. § 8-348 – Setting Aside Adjudication (taken out of agenda order)

Judge Quigley shared a synopsis of the subcommittee outreach and discussions regarding set aside and shared the consensus of the members to not repeal set aside. The task force discussed the legislative draft agreeing to grammatic amendments along with the following additional amendments:

- Subsection A
- Added “and no longer under the jurisdiction of the juvenile court or the department of juvenile corrections.

- Subsection C
 - Changed “shall” to “may” making the factor consideration discretionary and retaining C.1.
 - Removed compliance with probation and conditional liberty conditions and imposed sentence.
 - Added felony convictions and pending criminal charges to the factors for consideration
 - Limited restitution to that owed by the person
 - Retaining C.4. (victim’s input)
- Subsection D
 - Required the court to dismiss the petition
 - Removed the exception for Game and Fish Commission that is not currently in law
- Subsection E
 - Repealed allowances for future use of the adjudication.
 - Continued the requirement that all remaining unpaid monetary obligations are still owed and subject to remedy from section 8-349(K).
- Subsection F
 - Allowed mitigation of monetary obligations except for victim restitution.

Straw Polls:

- Granting Mr. Landau the authority to remove subsection J.5. if ADOT agrees. **Vote: 12-0**
- Removing “convicted” from subsection J. Noting that “convicted” is in current law. **Vote: 11-1**
- Striking the current subsections C and D and replacing them with new subsection J. **Vote: 9-3**

The legislative proposal as amended by the Task Force will be taken forward to the Committee on Juvenile Court on October 18.

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

Judge Quigley explained the complexities of moving from destruction of juvenile records to sealing juvenile records. With that understanding, the members agreed to the following amendments to the draft legislation:

- Section Title & throughout
 - Revert from sealing to destruction
- Subsections B & D
 - Added a requirement that the applicant no longer be under the jurisdiction of the juvenile court or the department of juvenile corrections.
 - Added a requirement that the applicant not be required to register pursuant to A.R.S. §13-3821
 - Returned monetary assessments to the draft
 - Limited restitution and monetary assessments to those moneys owed by the applicant
 - Reverted to the requirement of restitution and monetary assessments being paid in full.
 - Removed extenuating circumstances.
 - Returned “successfully” in D.
 - Returned the court’s discretion regarding ordering the record destroyed.
- Subsection E
 - Retained as amended because it does not change the meaning of the subsection.
- Subsection F & G
 - Reverted to age 25 from 21.

- Added a requirement that the applicant not be required to register pursuant to A.R.S. §13-3821
 - Limited restitution and monetary assessments to those moneys owed by the applicant.
 - Reverted to the requirement of restitution and monetary assessments being paid in full.
 - Removed extenuating circumstances.
 - Reverted to the requirement of restitution and monetary assessments being paid in full.
- Subsection K
- Retained the amendment that added automatic destruction of juvenile records concerning a referral or citation that did not result in further action or that resulted in a successful completion of diversion.
- Subsection L
- Retained the amendment that requires the Department of Child Safety to destroy certain records within six months of notice of juvenile records destruction.
- Subsection M
- Retained the definition of “successful.”

Straw Polls:

- Combine amended A.R.S. §§ 8-348 and 8-349 and run as single bill. **Vote:** 12-0
- Move forward with § 8-349 as amended and ask the subcommittee to continue consideration. **Vote:** 12-0

A.R.S. § 8-305 – Detention center; dangerous offenses

Mr. Landau presented the history of detention of pre-adjudication youth who have been charged with a dangerous offense as an adult. Currently, at issue is, whether these amendments should move forward and who should submit the amendments to the legislature.

Eric Meaux explained the proposed legislation from the County Supervisor’s Association that would give the court guidance regarding and the discretion to decide the detention of these youth.

After providing input, the members agreed the proposal was outside the Task Force’s scope and did not make a recommendation.

A.R.S. § 8-341 – Juvenile offenses; probation

Mr. Landau provided the background for this proposed legislation.

Mr. Meaux discussed policy and practice associated with youth probation violations and subsequent felony adjudications. The current use of evidence-based risk assessment and the amendments to this section would give court discretion regarding low-risk offenders and intensive probation.

Again, because this proposal was out of scope for Task Force, the members provided input, but did not take formal action.

Call to the Public

Mr. Landau made the first of two calls to the public. The following people offered their input to the members:

- Cheryl Clark, Pinal County, Arizona People Power
- Virginia Metz
- Art Glenberg, Tempe People Power
- Victor Cervantes, Jr., Restore Your Vote

Discuss Juvenile Subcommittee Forms and Instructions

Recognizing the content of the earlier discussion and amendments to the proceeding legislative proposals, Tom O'Connell was asked to review and conform the Legal Requirements Instructions for all Applications, Application to Set Aside/Instructions, Application to Seal/Instructions, and Application to Restore Firearm Rights/Instructions.

The advisements regarding the limitations of restoring the right for a juvenile to possess a firearm were discussed. The members agreed that no changes were necessary.

Discuss Automatic Restoration of Civil Rights

Two proposals were presented.

Proposal 1 would:

- Civil Rights (the right to vote, hold public office of trust or profit, and serve as a juror)
 - Grant automatic restoration for first time offenders and persons who were convicted of Prop. 100 offenses. This is not dependent upon the payment in full of restitution or monetary obligations.
 - Allow a person who is not eligible for automatic restoration, with a second or subsequent felony offense (state or federal) to apply to have civil rights restored upon termination of probation.
 - Allow a person who is not eligible for automatic restoration (state or federal offenses) to apply to have civil rights restored upon absolute discharge from the department of corrections.
- Firearms
 - Prohibit a person who committed a dangerous offense under §13-704 from applying to have firearm rights restored.
 - Allow a person who committed a serious offense, or a violent or aggravated offense as defined in §13-706 to apply for restoration of firearm rights 10 years after discharge.
 - Allow a person who committed an offense not defined in §§13-704 and 13-706 to apply for restoration of firearm rights 2 years after discharge.
 - Move restoration of right to possess a firearm regarding adjudicated juveniles to Title 8.

Proposal 2 would:

- Civil Rights (the right to vote, hold public office of trust or profit, and serve as a juror)
 - Grant automatic restoration of civil rights upon final discharge.
 - Define final discharge as completion of probation or receipt of a certificate of absolute discharge.
- Firearms
 - Same as above.

After determining that the Task Force should not recommend any changes to the firearms portion of the proposals, the members debated the civil rights portions and will continue this discussion at the November 27, meeting.

The members agreed by consensus that Prop 100 offenses should be granted automatic restoration of civil rights whether 1st or subsequent conviction.

Straw Poll:

- Absent resolution to the philosophical discussion about automatic restoration, , move forward on statutory clean-up on Proposal 1. **Vote: 12-0**

Good of the Order/Call to the Public

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

- Finalization of juvenile adjudication set aside; destruction of juvenile records, and restoration of firearm statutes, forms, and instructions.
- Resolution of restoration of civil rights discussion.

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

Adjournment

The meeting adjourned at 3:28 p.m.

Next Meeting:

Tuesday, November 27, 2018 - 10:00 a.m. to 3:00 p.m. - Conference Rooms 345 A&B