START\_STATUTE41-1093.04.  Occupational license, permit or certificate or other state recognition rights; petition for review of criminal record; annual report

A.  A person with a criminal record may petition an agency, at any time, including before obtaining any required education or experience, taking any examination or paying any fee, for a determination of whether the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition.

B.  In the petition, the person shall include:

1.  The person's complete criminal history record or authorization for the agency to obtain the person's criminal history record.

2.  Any additional information about the person's current circumstances, including the time since the offense was committed and the sentence was completed, the payment of any court‑ordered restitution, evidence of rehabilitation, testimonials, employment history and employment aspirations.

C.  The agency shall determine whether the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition.

D.  Notwithstanding any other law or rule, the agency may determine that the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition only if the agency concludes that the state has an important interest in protecting public safety that is superior to the person's right and either of the following applies:

1.  The person was convicted of any of the following, the conviction occurred within seven years before the date of the petition, excluding any period of time that the person was imprisoned in the custody of the state department of corrections, and the conviction has not been set aside:

(a)  A felony offense.

(b)  A violent crime as defined in section 13‑901.03.

(c)  An offense included in title 13, chapter 20, 21 or 22 or section 13‑2310 or 13‑2311 if the license, permit, certificate or other state recognition is for an occupation in which the applicant would owe a fiduciary duty to a client.

2.  The person was, at any time, convicted of either of the following:

(a)  An offense that a law specifically requires the agency to consider when issuing a license, permit, certificate or other state recognition and the conviction has not been set aside.

(b)  A dangerous offense as defined in section 13‑105, a serious offense as defined in section 13‑706, a dangerous crime against children as defined in section 13‑705 or an offense included in title 13, chapter 14 or 35.1, and the conviction has not been set aside.

E.  To conclude that the state has an important interest in protecting public safety that is superior to the person's right, as required by subsection D of this section, the agency must determine by clear and convincing evidence at the time of the petition that both of the following apply:

1.  The specific offense that the person was convicted of substantially relates to the state's interest and specifically and directly relates to the duties and responsibilities of the occupation, except offenses involving moral turpitude.

2.  The person, based on the nature of the specific offense that the person was convicted of and the person's current circumstances, including the passage of time since the person committed the crime and any evidence of rehabilitation or treatment, is more likely to reoffend by virtue of having the license, permit, certificate or other state recognition than if the person did not have the license, permit, certificate or other state recognition.

F.  In determining if a person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition, the agency may not consider negatively any of the following:

1.  Nonconviction information, including information related to a deferred adjudication, participation in a diversion program or an arrest that was not followed by a conviction.

2.  A conviction that has been sealed, dismissed, expunged or pardoned.

3.  A juvenile adjudication.

4.  A nonviolent misdemeanor.

G.  The agency shall issue a determination on the petition within ninety days after the agency receives the petition.  The determination on the petition must be in writing and include all of the following:

1.  Findings of fact and conclusions of law.

2.  The grounds and reasons for the determination if the person's criminal history disqualifies the person.

H.  If the agency determines that the state's interest to protect public safety is superior to the person's right, the agency may advise the person of the actions that the person may take to remedy the disqualification, including:

1.  An appeal of the determination as provided in title 12, chapter 7, article 6.

2.  The earliest date the person may submit a new petition to the agency, which must be not later than two years after the final determination of the initial petition.

I.  The agency shall rescind the determination any time after the determination is made but before issuing a license, permit, certificate or other state recognition if the person is convicted of an additional offense that is included in subsection D of this section.

J.  Subsection D and subsection F, paragraphs 1, 2 and 4 of this section do not apply to any of the following:

1.  Any law enforcement agency or the Arizona peace officer standards and training board.

2.  Any license or registration certificate that is issued pursuant to title 32, chapter 24 or 26.

3.  Any certification, license or permit that is issued pursuant to title 15.

4.  Statutory requirements for a fingerprint clearance card issued pursuant to chapter 12, article 3.1 of this title.

5.  Any criteria for license, permit or certificate eligibility that is established by an interstate compact.

K.  Each agency shall submit a report on or before July 1 of each year to the governor and the legislature and provide a copy of this report to the secretary of state.  The report shall include the following information for the previous calendar year:

1.  The number of applicants who petitioned the agency for a determination.

2.  The number of petitions that were granted and the types of offenses at issue.

3.  The number of petitions that were denied and the types of offenses at issue.

4.  The number of determinations that were rescinded.

L.  An agency shall adopt forms for petitions as prescribed in subsections A and B of this section. END\_STATUTE