

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 83
HOUSE BILL 2312

AN ACT

AMENDING SECTION 13-907, ARIZONA REVISED STATUTES; RELATING TO SETTING
ASIDE A CONVICTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-907, Arizona Revised Statutes, is amended to
3 read:

4 13-907. Setting aside judgment of convicted person on
5 discharge; application; release from disabilities;
6 firearm possession; exceptions

7 A. Except as provided in subsection ~~F~~ K of this section, every
8 person convicted of a criminal offense, on fulfillment of the conditions
9 of probation or sentence and discharge by the court, may apply to the
10 ~~judge, justice of the peace or magistrate who pronounced sentence or~~
11 ~~imposed probation or such judge, justice of the peace or magistrate's~~
12 ~~successor in office~~ COURT to have the judgment of guilt set aside. The
13 convicted person shall be informed of this right at the time of ~~discharge~~
14 SENTENCING.

15 B. The ~~convicted~~ person or, ~~if authorized in writing,~~ the ~~convicted~~
16 person's attorney or probation officer may apply to set aside the
17 judgment. THE CLERK OF THE COURT MAY NOT CHARGE A FILING FEE FOR AN
18 APPLICATION TO HAVE A JUDGMENT OF GUILT SET ASIDE.

19 C. THE COURT SHALL CONSIDER THE FOLLOWING FACTORS WHEN DETERMINING
20 WHETHER TO SET ASIDE THE CONVICTION:

21 1. THE NATURE AND CIRCUMSTANCES OF THE OFFENSE THAT THE CONVICTION
22 IS BASED ON.

23 2. THE APPLICANT'S COMPLIANCE WITH THE CONDITIONS OF PROBATION, THE
24 SENTENCE IMPOSED AND ANY STATE DEPARTMENT OF CORRECTIONS' RULES OR
25 REGULATIONS, IF APPLICABLE.

26 3. ANY PRIOR OR SUBSEQUENT CONVICTIONS.

27 4. THE VICTIM'S INPUT AND THE STATUS OF VICTIM RESTITUTION, IF ANY.

28 5. THE LENGTH OF TIME THAT HAS ELAPSED SINCE THE COMPLETION OF THE
29 APPLICANT'S SENTENCE.

30 6. THE APPLICANT'S AGE AT TIME OF THE CONVICTION.

31 7. ANY OTHER FACTOR THAT IS RELEVANT TO THE APPLICATION.

32 ~~C.~~ D. If the ~~judge, justice of the peace or magistrate grants the~~
33 application IS GRANTED, the ~~judge, justice of the peace or magistrate~~
34 COURT shall set aside the judgment of guilt, dismiss the ~~accusations or~~
35 COMPLAINT, information OR INDICTMENT and order that the person be released
36 from all penalties and disabilities resulting from the conviction except
37 those imposed by:

38 1. The department of transportation pursuant to section 28-3304,
39 ~~28-3305~~, 28-3306, 28-3307, 28-3308, ~~28-3312~~ or 28-3319, ~~except that the~~
40 ~~conviction may be used as a conviction if the conviction would be~~
41 ~~admissible had it not been set aside and may be pleaded and proved in any~~
42 ~~subsequent prosecution of such person by the state or any of its~~
43 ~~subdivisions for any offense or used by the department of transportation~~
44 ~~in enforcing section 28-3304, 28-3306, 28-3307, 28-3308 or 28-3319 as if~~
45 ~~the judgment of guilt had not been set aside.~~

- 1 2. The game and fish commission pursuant to section 17-314 or
2 17-340.
- 3 E. A CONVICTION THAT IS SET ASIDE MAY BE:
- 4 1. USED AS A CONVICTION IF THE CONVICTION WOULD BE ADMISSIBLE HAD
5 IT NOT BEEN SET ASIDE.
- 6 2. ALLEGED AS AN ELEMENT OF AN OFFENSE.
- 7 3. USED AS A PRIOR CONVICTION.
- 8 4. PLEADED AND PROVED IN ANY SUBSEQUENT PROSECUTION OF THE PERSON
9 BY THIS STATE OR ANY SUBDIVISION OF THIS STATE FOR ANY OFFENSE.
- 10 5. USED BY THE DEPARTMENT OF TRANSPORTATION IN ENFORCING SECTION
11 28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312 OR 28-3319 AS IF THE
12 JUDGMENT OF GUILT HAD NOT BEEN SET ASIDE.
- 13 F. THE CLERK OF THE COURT MUST NOTIFY THE DEPARTMENT OF PUBLIC
14 SAFETY IF A CONVICTION IS SET ASIDE. THE DEPARTMENT OF PUBLIC SAFETY MUST
15 UPDATE THE PERSON'S CRIMINAL HISTORY WITH AN ANNOTATION THAT THE
16 CONVICTION HAS BEEN SET ASIDE BUT MAY NOT REDACT OR REMOVE ANY PART OF THE
17 PERSON'S RECORD.
- 18 G. THIS SECTION DOES NOT:
- 19 1. REQUIRE A LAW ENFORCEMENT AGENCY TO REDACT OR REMOVE A RECORD OR
20 INFORMATION FROM THE RECORD OF A PERSON WHOSE CONVICTION IS SET ASIDE.
- 21 2. PRECLUDE THE DEPARTMENT OF PUBLIC SAFETY OR THE BOARD OF
22 FINGERPRINTING FROM CONSIDERING A CONVICTION THAT HAS BEEN SET ASIDE WHEN
23 EVALUATING AN APPLICATION FOR A FINGERPRINT CLEARANCE CARD PURSUANT TO
24 SECTION 41-1758.03 OR 41-1758.07.
- 25 H. IF THE COURT DENIES AN APPLICATION TO HAVE A JUDGMENT OF GUILT
26 SET ASIDE, THE COURT SHALL STATE ITS REASONS FOR THE DENIAL IN WRITING AND
27 ON THE RECORD.
- 28 I. A VICTIM HAS THE RIGHT TO BE PRESENT AND BE HEARD AT ANY
29 PROCEEDING IN WHICH THE DEFENDANT HAS FILED AN APPLICATION TO HAVE A
30 JUDGMENT OF GUILT SET ASIDE PURSUANT TO THIS SECTION. IF THE VICTIM HAS
31 MADE A REQUEST FOR POSTCONVICTION NOTICE, THE ATTORNEY FOR THE STATE SHALL
32 PROVIDE THE VICTIM WITH NOTICE OF THE DEFENDANT'S APPLICATION AND OF THE
33 RIGHTS PROVIDED TO THE VICTIM IN THIS SECTION.
- 34 ~~D.~~ J. Notwithstanding section 13-905 or 13-906, if a ~~judgment of~~
35 ~~guilt~~ CONVICTION is set aside ~~pursuant to this section~~, the person's right
36 to possess a gun or firearm is restored. This subsection does not apply
37 to a person who was convicted of a serious offense as defined in section
38 13-706.
- 39 ~~E.~~ K. This section does not apply to a person who was convicted of
40 ~~a criminal offense~~ ANY OF THE FOLLOWING:
- 41 1. ~~involving~~ A dangerous offense.
- 42 2. AN OFFENSE for which the person is required or ordered by the
43 court to register pursuant to section 13-3821.
- 44 3. AN OFFENSE for which there has been a finding of sexual
45 motivation pursuant to section 13-118.

- 1 4. **AN OFFENSE** in which the victim is a minor under fifteen years of
2 age.
3 5. **AN OFFENSE** in violation of section 28-3473, any local ordinance
4 relating to stopping, standing or operation of a vehicle or title 28,
5 chapter 3, except a violation of section 28-693 or any local ordinance
6 relating to the same subject matter as section 28-693.

APPROVED BY THE GOVERNOR MARCH 27, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 27, 2018.