

REFERENCE TITLE: **expungement; arrest; conviction; sentencing records**

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HB 2362

Introduced by
Representatives Toma: Blackman, Bowers, Butler, Campbell, Engel, Epstein,
Espinoza, Lieberman, Stringer

AN ACT

AMENDING TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-926; RELATING TO CRIME RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 13, chapter 9, Arizona Revised Statutes, is
3 amended by adding section 13-926, to read:

4 13-926. Expungement; requirements; fee; appeal

5 A. THE COURT MAY EXPUNGE THE RECORD OF A PERSON'S ARREST,
6 CONVICTION AND SENTENCE. A PERSON WHOSE RECORD IS EXPUNGED SHALL BE
7 TREATED IN ALL RESPECTS AS IF THE PERSON WAS NEVER ARRESTED, CONVICTED OR
8 SENTENCED, EXCEPT THAT IF THE PERSON IS CONVICTED OF AN OFFENSE THAT IS
9 COMMITTED AFTER THE ORDER OF EXPUNGEMENT IS ENTERED, THE COURT MAY
10 CONSIDER THE EXPUNGED CONVICTION IN DETERMINING THE SENTENCE TO IMPOSE ON
11 THE PERSON AND MAY USE THE EXPUNGED CONVICTION TO SENTENCE THE PERSON AS A
12 REPETITIVE OFFENDER PURSUANT TO SECTION 13-703.

13 B. EXCEPT AS PROVIDED IN SUBSECTION E, F, I OR L OF THIS SECTION, A
14 PERSON WHO IS:

15 1. CONVICTED OF AN OFFENSE MAY PETITION THE COURT THAT PRONOUNCED
16 SENTENCE TO EXPUNGE THE PERSON'S RECORD OF ARREST, CONVICTION AND
17 SENTENCE. THE COURT SHALL EXPUNGE THE RECORDS IF THE COURT DETERMINES
18 THAT THE EXPUNGEMENT WILL ASSIST IN THE PETITIONER'S REHABILITATION AND IS
19 CONSISTENT WITH PROTECTING THE PUBLIC WELFARE.

20 2. INDICTED FOR AN OFFENSE BUT AGAINST WHOM CHARGES ARE DISMISSED,
21 WHO IS FOUND NOT GUILTY OR WHOSE CONVICTION IS VACATED MAY PETITION THE
22 COURT OF PROPER JURISDICTION IN THE CITY, TOWN OR COUNTY THAT FILED THE
23 CHARGES AGAINST THE PERSON OR WHERE THE ARREST OCCURRED TO EXPUNGE THE
24 PERSON'S ARREST RECORD OR COURT RECORD, OR BOTH.

25 C. UNLESS THE PETITIONER REQUESTS A HEARING, THE COURT MAY GRANT OR
26 DENY A PETITION FOR EXPUNGEMENT WITHOUT A HEARING. THE COURT MAY DISMISS
27 A PETITION THAT DOES NOT MEET THE REQUIREMENTS PRESCRIBED IN SUBSECTIONS
28 E, F, I AND L OF THIS SECTION WITHOUT A HEARING. THE COURT SHALL PROVIDE
29 A COPY OF THE PETITION FOR EXPUNGEMENT TO THE PROSECUTOR, IF APPLICABLE,
30 AND ALLOW THE PROSECUTOR TO RESPOND TO THE PETITION AND REQUEST A
31 HEARING. THE VICTIM HAS A RIGHT TO BE PRESENT AND HEARD AT ANY PROCEEDING
32 IN WHICH THE DEFENDANT HAS FILED A PETITION FOR EXPUNGEMENT. IF THE
33 VICTIM HAS MADE A REQUEST FOR POST CONVICTION NOTICE, THE PROSECUTOR SHALL
34 PROVIDE THE VICTIM WITH NOTICE OF THE DEFENDANT'S PETITION AND OF THE
35 RIGHTS PROVIDED TO THE VICTIM IN THIS SECTION.

36 D. A PERSON MAY FILE A PETITION FOR EXPUNGEMENT OF THE PERSON'S
37 ARREST, CONVICTION AND SENTENCE RECORDS IN THE SUPERIOR COURT FOR ANY SUCH
38 RECORDS THAT ARE IN THE POSSESSION OF THE SUPERIOR COURT, EXCEPT THAT THE
39 SUPERIOR COURT MAY NOT EXPUNGE ANY RECORD THAT RELATES TO A PUBLISHED
40 OPINION.

41 E. A PERSON WHO WAS CONVICTED OF AN OFFENSE AND WHO HAS NOT
42 SUBSEQUENTLY BEEN CONVICTED OF ANY OTHER CRIME EXCEPT A MOVING CRIMINAL
43 TRAFFIC OFFENSE, EXCLUDING A CONVICTION FOR A VIOLATION OF SECTION
44 28-1381, 28-1382 OR 28-1383, MAY PETITION FOR EXPUNGEMENT OF THE PERSON'S
45 RECORD OF ARREST, CONVICTION AND SENTENCE AFTER THE PERSON COMPLETES ALL

1 OF THE TERMS AND CONDITIONS OF THE PERSON'S SENTENCE AND THE FOLLOWING
2 PERIOD OF TIME HAS PASSED SINCE THE DATE OF THE CONVICTION:

- 3 1. TEN YEARS FOR A CLASS 2 OR 3 FELONY.
- 4 2. FIVE YEARS FOR A CLASS 4, 5 OR 6 FELONY.
- 5 3. THREE YEARS FOR A CLASS 1 MISDEMEANOR.
- 6 4. TWO YEARS FOR A CLASS 2 OR 3 MISDEMEANOR.

7 F. A PERSON WHO IS CONVICTED OF TWO OR MORE OFFENSES MAY NOT
8 PETITION FOR EXPUNGEMENT UNTIL THE PERIOD OF TIME PRESCRIBED IN SUBSECTION
9 E OF THIS SECTION HAS PASSED FOR EACH CONVICTION.

10 G. AFTER A PETITION FOR EXPUNGEMENT IS TIMELY FILED, THE COURT
11 SHALL NOTIFY THE STATE DEPARTMENT OF CORRECTIONS AND REQUEST THE
12 DEPARTMENT TO PREPARE AND SUBMIT A REPORT TO THE COURT THAT INCLUDES ALL
13 OF THE PETITIONER'S STATE AND FEDERAL ARRESTS, PROSECUTIONS AND
14 CONVICTIONS AND ANY OTHER INFORMATION THAT THE COURT REQUESTS OR THAT THE
15 DEPARTMENT BELIEVES WILL ASSIST THE COURT IN MAKING ITS DETERMINATION.
16 THE DIRECTOR MAY CHARGE A FEE DETERMINED BY THE DIRECTOR FOR THE
17 INVESTIGATION UNLESS THE PETITIONER IS INDIGENT OR HAS BEEN FOUND NOT
18 GUILTY OR THE CASE WAS DISMISSED OR NOT PROSECUTED AND THE PETITION IS
19 FILED PURSUANT TO SUBSECTION B, PARAGRAPH 2 OF THIS SECTION.

20 H. IF THE COURT GRANTS A PETITION FOR EXPUNGEMENT:

21 1. THE COURT SHALL ISSUE AN ORDER OR MINUTE ENTRY TO THE PETITIONER
22 THAT STATES THAT THE PETITIONER'S BEHAVIOR AFTER CONVICTION WARRANTS THE
23 ISSUANCE OF AN EXPUNGEMENT ORDER, THAT THE EXPUNGEMENT ORDER EXPUNGES ANY
24 RECORD OF THE PETITIONER'S ARREST, CONVICTION AND SENTENCE AND THAT THE
25 CLERK OF THE COURT WILL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY, THE
26 PROSECUTOR AND THE ARRESTING LAW ENFORCEMENT AGENCY, IF APPLICABLE, OF THE
27 EXPUNGEMENT ORDER.

28 2. ON ORDER OF A COURT, THE CLERK OF THE COURT SHALL SEAL ALL
29 RECORDS RELATING TO THE EXPUNGED ARREST, CONVICTION AND SENTENCE AND ALLOW
30 THE RECORDS TO BE ACCESSED ONLY BY THE PERSON WHOSE RECORD WAS EXPUNGED OR
31 THE PERSON'S ATTORNEY, A COURT FOR SENTENCING AS PRESCRIBED IN SUBSECTION
32 A OF THIS SECTION, A PEACE OFFICER FOR A LAWFUL PURPOSE OR AS OTHERWISE
33 PROVIDED IN THIS SECTION.

34 3. THE DEPARTMENT OF PUBLIC SAFETY SHALL SEAL AND SEPARATE THE
35 EXPUNGED RECORD FROM THE DEPARTMENT'S RECORDS AND INFORM ALL APPROPRIATE
36 STATE AND FEDERAL LAW ENFORCEMENT AGENCIES OF THE EXPUNGEMENT. THE
37 DEPARTMENT MAY CHARGE THE SUCCESSFUL PETITIONER A FEE DETERMINED BY THE
38 DIRECTOR TO RESEARCH AND CORRECT THE PETITIONER'S CRIMINAL HISTORY RECORD
39 UNLESS THE PETITIONER IS INDIGENT OR HAS BEEN FOUND NOT GUILTY OR THE CASE
40 HAS BEEN DISMISSED OR NOT PROSECUTED AND THE PETITION IS FILED PURSUANT TO
41 SUBSECTION B, PARAGRAPH 1 OF THIS SECTION.

42 4. THE ARRESTING AND PROSECUTING AGENCIES SHALL CLEARLY IDENTIFY IN
43 EACH AGENCY'S FILES AND ELECTRONIC RECORDS THAT THE PETITIONER'S ARREST OR
44 CONVICTION AND SENTENCE IS EXPUNGED.

1 5. EXCEPT ON AN APPLICATION FOR EMPLOYMENT THAT REQUIRES A
2 FINGERPRINT CLEARANCE CARD PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1,
3 A PERSON WHOSE CONVICTION IS VACATED PURSUANT TO THIS SECTION MAY STATE,
4 IN ALL INSTANCES, THAT THE PERSON HAS NEVER BEEN ARRESTED FOR, CHARGED
5 WITH OR CONVICTED OF THE CRIME THAT IS THE SUBJECT OF THE CONVICTION,
6 INCLUDING IN RESPONSE TO QUESTIONS ON EMPLOYMENT, HOUSING, FINANCIAL AID
7 OR LOAN APPLICATIONS.

8 I. IF THE COURT DENIES A PETITION FOR EXPUNGEMENT, BOTH OF THE
9 FOLLOWING APPLY:

10 1. A NEW PETITION MAY NOT BE FILED UNTIL THREE YEARS AFTER THE DATE
11 OF THE DENIAL.

12 2. THE PETITIONER MAY FILE A DIRECT APPEAL PURSUANT TO SECTION
13 13-4033, SUBSECTION A, PARAGRAPH 3.

14 J. A CONVICTION FOR AN OFFENSE THAT IS COMMITTED IN ANOTHER
15 JURISDICTION AND THAT IF COMMITTED IN THIS STATE WOULD NOT CONSTITUTE AN
16 OFFENSE IN THIS STATE MAY NOT BE USED AGAINST THE PETITIONER OR PROHIBIT
17 THE PETITIONER FROM OBTAINING AN EXPUNGEMENT.

18 K. IF THE PETITIONER IS CHARGED WITH AN OFFENSE AFTER FILING A
19 PETITION FOR EXPUNGEMENT AND THE OFFENSE COULD RESULT IN A CONVICTION THAT
20 CANNOT BE EXPUNGED OR THAT COULD EXTEND THE TIME TO FILE A PETITION FOR
21 EXPUNGEMENT, THE COURT MAY NOT GRANT OR DENY THE PETITION FOR EXPUNGEMENT
22 UNTIL THAT CHARGE IS DISPOSED OF.

23 L. THIS SECTION DOES NOT APPLY TO A PERSON WHO IS SENTENCED AS A
24 DANGEROUS OFFENDER PURSUANT TO SECTION 13-704 OR WHO IS CONVICTED OF A
25 DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-705.

26 M. THIS SECTION DOES NOT AFFECT EITHER OF THE FOLLOWING:

27 1. THE RIGHT OF THE PERSON WHOSE RECORD IS EXPUNGED TO APPEAL FROM
28 THE CONVICTION OR SENTENCE OR TO RELY ON IT IN BAR OF ANY SUBSEQUENT
29 PROCEEDING FOR THE SAME OFFENSE.

30 2. THE RIGHT OF A LAW ENFORCEMENT AGENCY TO MAINTAIN AN ARREST AND
31 CONVICTION RECORD AND TO COMMUNICATE INFORMATION REGARDING THE EXPUNGED
32 RECORD OF ARREST OR CONVICTION TO OTHER LAW ENFORCEMENT AGENCIES FOR
33 LAWFUL INVESTIGATIVE PURPOSES OR IN DEFENSE OF A CIVIL ACTION THAT ARISES
34 OUT OF THE FACTS OF THE ARREST OR TO THE ARIZONA PEACE OFFICER STANDARDS
35 AND TRAINING BOARD SOLELY TO ASSIST THE BOARD IN DETERMINING THE FITNESS
36 OF A PERSON TO SERVE AS A PEACE OFFICER, EXCEPT THAT IN ANY OF THESE CASES
37 THE INFORMATION MAY NOT BE DISCLOSED TO ANY OTHER PERSON.

38 Sec. 2. Applicability

39 This act applies to a person who is arrested, convicted or sentenced
40 before, on or after the effective date of this act.