

REFERENCE TITLE: marijuana possession; expungement; records; erasure

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HB 2178

Introduced by
Representatives Blanc: Engel, Rodriguez

AN ACT

AMENDING TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-911; AMENDING SECTION 41-1733, ARIZONA REVISED STATUTES; 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 13-911, to read:

4 13-911. Marijuana possession; automatic expungement and
5 records erasure; petition to expunge; expungement
6 order; requirements; definition

7 A. THE COURT SHALL EXPUNGE THE RECORD OF A PERSON'S ARREST,
8 CONVICTION AND SENTENCE FOR POSSESSING MARIJUANA IN VIOLATION OF SECTION
9 13-3405, SUBSECTION A, PARAGRAPH 1. A PERSON WHOSE RECORD IS EXPUNGED
10 SHALL BE TREATED IN ALL RESPECTS AS IF THE PERSON WAS NEVER ARRESTED,
11 CONVICTED OR SENTENCED.

12 B. WITHIN ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, ALL
13 LAW ENFORCEMENT AGENCIES IN THIS STATE AND THE CLERK OF THE COURT IN EACH
14 COUNTY SHALL IDENTIFY AND DESTROY ALL RECORDS IN THE ENTITY'S POSSESSION
15 OR CONTROL THAT ARE RELATED TO A PERSON'S ARREST, CONVICTION AND SENTENCE
16 FOR POSSESSING MARIJUANA IN VIOLATION OF SECTION 13-3405, SUBSECTION A,
17 PARAGRAPH 1.

18 C. IF A PERSON IS ARRESTED FOR, CHARGED WITH OR INDICTED FOR A
19 VIOLATION OF SECTION 13-3405, SUBSECTION A, PARAGRAPH 1 AND THE COURT OR A
20 PROSECUTOR DISMISSES OR VACATES THE COMPLAINT, INFORMATION OR INDICTMENT,
21 THE PERSON IS FOUND NOT GUILTY OR A CRIMINAL CHARGE IS NOT FILED AGAINST
22 THE PERSON IN THE SUPERIOR COURT OR A MUNICIPAL COURT OR JUSTICE COURT
23 WITHIN FOURTEEN DAYS AFTER THE ARREST OR COURT DISPOSITION, ALL LAW
24 ENFORCEMENT, GRAND JURY, PROSECUTING AGENCY AND COURT RECORDS THAT PERTAIN
25 TO THE ARREST OR CHARGE SHALL BE ERASED. THE CLERK OF THE COURT OR THE
26 PERSON WHO IS CHARGED WITH THE RETENTION AND CONTROL OF THE RECORDS MAY
27 NOT DISCLOSE TO ANYONE THE EXISTENCE OF THE RECORDS OR ANY INFORMATION
28 THAT PERTAINS TO ANY CHARGE THAT WAS ERASED. THIS SUBSECTION DOES NOT
29 PROHIBIT AN ARRESTED, CHARGED OR INDICTED PERSON OR THE PERSON'S HEIRS
30 FROM FILING A PETITION WITH THE COURT OR THE CLERK OF THE COURT TO ERASE
31 THE RECORDS AND, IF GRANTED, THE RECORDS SHALL BE ERASED.

32 D. THE CLERK OF THE COURT, ANY PERSON WHO IS CHARGED WITH RETAINING
33 AND CONTROLLING THE RECORDS OR ANY LAW ENFORCEMENT AGENCY THAT HAS
34 INFORMATION CONTAINED IN THE ERASED RECORDS MAY NOT DISCLOSE TO ANYONE,
35 EXCEPT THE SUBJECT OF THE RECORD ON SUBMISSION OF SATISFACTORY PROOF OF
36 THE SUBJECT'S IDENTITY, INFORMATION THAT PERTAINS TO ANY CHARGE THAT IS
37 ERASED UNDER THIS SECTION. THE CLERK OF THE COURT OR A PERSON WHO IS
38 CHARGED WITH RETAINING AND CONTROLLING THE RECORDS SHALL FORWARD A NOTICE
39 OF THE ERASURE TO ANY LAW ENFORCEMENT AGENCY THAT THE CLERK OR PERSON
40 KNOWS RECEIVED DISSEMINATED INFORMATION CONCERNING THE ARREST AND THE LAW
41 ENFORCEMENT AGENCY SHALL ERASE THE DISSEMINATED INFORMATION FROM THE
42 RECORDS. THE CLERK OF THE COURT OR A PERSON WHO IS CHARGED WITH RETAINING
43 AND CONTROLLING THE RECORDS SHALL PROVIDE ADEQUATE SECURITY MEASURES TO
44 SAFEGUARD AGAINST UNAUTHORIZED ACCESS TO OR DISSEMINATION OF THE RECORDS
45 OR, ON THE REQUEST OF THE ACCUSED, CAUSE THE ACTUAL PHYSICAL DESTRUCTION

1 OF THE RECORDS, EXCEPT THAT THE CLERK OF THE COURT OR PERSON MAY NOT CAUSE
2 THE ACTUAL PHYSICAL DESTRUCTION OF THE RECORDS UNTIL THREE YEARS AFTER THE
3 DATE OF THE FINAL DISPOSITION OF THE CRIMINAL CASE TO WHICH THE RECORDS
4 PERTAIN. A PERSON WHO HAS A RECORD ERASED MAY STATE THAT THE PERSON HAS
5 NEVER BEEN ARRESTED WITHIN THE MEANING OF THE LAW WITH RESPECT TO THE
6 PROCEEDINGS THAT ARE ERASED AND MAY SWEAR SO UNDER OATH.

7 E. BEGINNING ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION, IF
8 A PERSON'S ARREST, CONVICTION OR SENTENCE IS NOT EXPUNGED AND ERASED
9 PURSUANT TO SUBSECTIONS A, B, C AND D OF THIS SECTION FOR POSSESSING
10 MARIJUANA PURSUANT TO SECTION 13-3405, SUBSECTION A, PARAGRAPH 1, THE
11 PERSON MAY PETITION THE COURT THAT PRONOUNCED SENTENCE TO EXPUNGE THE
12 PERSON'S RECORD OF ARREST, CONVICTION AND SENTENCE OR, IF THE PERSON
13 WAS INDICTED BUT THE CHARGES WERE DISMISSED, THE PERSON WAS FOUND NOT
14 GUILTY OR THE CONVICTION WAS VACATED, MAY PETITION THE COURT OF PROPER
15 JURISDICTION IN THE CITY, TOWN OR COUNTY THAT FILED THE CHARGES AGAINST
16 THE PERSON OR WHERE THE ARREST OCCURRED TO EXPUNGE THE PERSON'S ARREST
17 RECORD OR COURT RECORD, OR BOTH.

18 F. THE COURT SHALL GRANT A PETITION FOR EXPUNGEMENT WITHOUT A
19 HEARING. THE COURT MAY DISMISS A PETITION THAT DOES NOT MEET THE
20 REQUIREMENTS PRESCRIBED IN THIS SECTION ONLY AFTER A HEARING. THE COURT
21 SHALL PROVIDE A COPY OF THE PETITION FOR EXPUNGEMENT TO THE PROSECUTOR AND
22 ALLOW THE PROSECUTOR TO RESPOND TO THE PETITION AND REQUEST A HEARING.

23 G. AFTER THE COURT GRANTS A PETITION FOR EXPUNGEMENT OR AFTER AN
24 AUTOMATIC EXPUNGEMENT UNDER SUBSECTION A OF THIS SECTION:

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

30 2. ON ORDER OF A COURT, THE CLERK OF THE COURT SHALL SEAL ALL
31 RECORDS RELATING TO THE EXPUNGED ARREST, CONVICTION AND SENTENCE AND ALLOW
32 THE RECORDS TO BE ACCESSED ONLY BY THE PERSON WHOSE RECORD WAS EXPUNGED,
33 THE PERSON'S ATTORNEY OR A PEACE OFFICER FOR A LAWFUL PURPOSE.

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 NOT CHARGE THE SUCCESSFUL PETITIONER A FEE TO RESEARCH AND
38 CORRECT THE PETITIONER'S CRIMINAL HISTORY RECORD.

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

42 5. A PERSON WHOSE CONVICTION IS VACATED PURSUANT TO THIS SECTION
43 MAY STATE, IN ALL INSTANCES, THAT THE PERSON HAS NEVER BEEN ARRESTED FOR,
44 CHARGED WITH OR CONVICTED OF THE CRIME THAT IS THE SUBJECT OF THE

1 CONVICTION, INCLUDING IN RESPONSE TO QUESTIONS ON EMPLOYMENT, HOUSING,
2 FINANCIAL AID OR LOAN APPLICATIONS.

3 H. A CONVICTION FOR AN OFFENSE THAT IS COMMITTED IN ANOTHER
4 JURISDICTION AND THAT IF COMMITTED IN THIS STATE WOULD NOT CONSTITUTE AN
5 OFFENSE IN THIS STATE MAY NOT BE USED AGAINST THE PETITIONER OR PROHIBIT
6 THE PETITIONER FROM OBTAINING AN EXPUNGEMENT.

7 I. THIS SECTION DOES NOT AFFECT THE RIGHT OF THE PERSON WHOSE
8 RECORD IS EXPUNGED TO APPEAL FROM THE CONVICTION OR SENTENCE OR TO RELY ON
9 IT IN BAR OF ANY SUBSEQUENT PROCEEDING FOR THE SAME OFFENSE.

10 J. THIS SECTION DOES NOT APPLY TO ANY LAW ENFORCEMENT, PROSECUTING
11 AGENCY OR COURT RECORD THAT PERTAINS TO AN INFORMATION OR INDICTMENT THAT
12 CONTAINS MORE THAN ONE COUNT WHILE THE CASE IS PENDING OR, IF THE CASE IS
13 DISPOSED OF, ONLY WHEN ALL COUNTS ARE ENTITLED TO ERASURE PURSUANT TO THIS
14 SECTION.

15 K. FOR THE PURPOSES OF THIS SECTION, "RECORD" INCLUDES EVERY
16 PHOTOGRAPH OF THE PERSON AND ALL PALM PRINTS AND FINGERPRINTS TAKEN OR
17 MADE OF THE PERSON. RECORD DOES NOT INCLUDE A COURT RECORD OR TRANSCRIPT
18 OF THE PROCEEDINGS THAT IS MADE OR PREPARED BY AN OFFICIAL COURT REPORTER,
19 ASSISTANT COURT REPORTER OR MONITOR.

20 Sec. 2. Section 41-1733, Arizona Revised Statutes, is amended to
21 read:

22 41-1733. Public safety interoperability fund

23 A. The public safety interoperability fund is established
24 consisting of monies appropriated to the fund by the legislature. The
25 department shall administer the fund. The fund is subject to legislative
26 appropriation.

27 B. Monies in the fund may be used only for:

28 1. Interoperable communication systems.

29 2. COSTS ASSOCIATED WITH THIS STATE'S OR A COURT'S OR LAW
30 ENFORCEMENT AGENCY'S COMPLIANCE WITH EXPUNGING AND ERASING RECORDS
31 PURSUANT TO SECTION 13-911.

32 Sec. 3. Applicability

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