

REFERENCE TITLE: sealing arrest; liability; sentencing records

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2320

Introduced by
Representatives Toma: Blackman, Bowers

AN ACT

AMENDING TITLE 12, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-558.04; AMENDING TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-911; AMENDING SECTION 13-4033, ARIZONA REVISED STATUTES; APPROPRIATING MONIES; RELATING TO SEALED CRIMINAL RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 12, chapter 5, article 3, Arizona Revised
3 Statutes, is amended by adding section 12-558.04, to read:

4 12-558.04. Limited liability; renting or leasing property to
5 persons with sealed criminal records; definition

6 A. A PROPERTY OWNER, PROPERTY MANAGER OR LANDLORD IS NOT LIABLE IN
7 A CIVIL ACTION FOR FAILING TO PROVIDE A SAFE LIVING ENVIRONMENT BASED
8 SOLELY ON THE FACT THAT THE PROPERTY OWNER, PROPERTY MANAGER OR LANDLORD
9 RENTED OR LEASED PROPERTY TO A PERSON WHO WAS CONVICTED OF A CRIMINAL
10 OFFENSE THAT WAS SEALED PURSUANT TO SECTION 13-911 BEFORE THE PERSON
11 RENTED OR LEASED THE PROPERTY.

12 B. IN A CIVIL ACTION THAT IS FILED AGAINST A PROPERTY OWNER,
13 PROPERTY MANAGER OR LANDLORD FOR FAILING TO PROVIDE A SAFE LIVING
14 ENVIRONMENT BASED ON THE FACT THAT THE PROPERTY OWNER, PROPERTY MANAGER OR
15 LANDLORD RENTED OR LEASED PROPERTY TO A PERSON WHO WAS PREVIOUSLY
16 CONVICTED OF A CRIMINAL OFFENSE THAT WAS SEALED PURSUANT TO SECTION
17 13-911, THE FACT THAT THE TENANT OR LESSEE WAS PREVIOUSLY CONVICTED OF A
18 CRIMINAL OFFENSE THAT WAS SEALED PURSUANT TO SECTION 13-911 BEFORE THE
19 PROPERTY OWNER, PROPERTY MANAGER OR LANDLORD RENTED OR LEASED THE PROPERTY
20 MAY NOT BE INTRODUCED INTO EVIDENCE.

21 C. THIS SECTION DOES NOT PROHIBIT A PERSON FROM FILING A CIVIL
22 ACTION AGAINST THE PROPERTY OWNER, PROPERTY MANAGER OR LANDLORD FOR
23 FAILING TO PROVIDE A SAFE LIVING ENVIRONMENT THAT IS BASED ON FACTORS
24 OTHER THAN THOSE PRESCRIBED IN SUBSECTION A OF THIS SECTION, INCLUDING
25 RENTING OR LEASING PROPERTY TO A PERSON WHO THE PROPERTY OWNER, PROPERTY
26 MANAGER OR LANDLORD KNOWS IS VIOLENT OR DANGEROUS.

27 D. FOR THE PURPOSES OF THIS SECTION, "CRIMINAL OFFENSE" MEANS ANY
28 CRIMINAL OFFENSE EXCEPT VIOLENT OFFENSES AND SEXUAL OFFENSES.

29 Sec. 2. Title 13, chapter 9, Arizona Revised Statutes, is amended
30 by adding section 13-911, to read:

31 13-911. Sealing of arrest, conviction and sentencing records;
32 requirements; fee; appeal

33 A. THE COURT MAY SEAL THE RECORD OF A PERSON'S ARREST, CONVICTION
34 AND SENTENCE. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A
35 PERSON WHOSE RECORD IS SEALED SHALL BE TREATED IN ALL RESPECTS AS IF THE
36 PERSON WAS NEVER ARRESTED, CONVICTED OR SENTENCED.

37 B. A CONVICTION THAT IS SEALED MAY BE:

38 1. USED AS A CONVICTION IF THE CONVICTION WOULD BE ADMISSIBLE IF
39 THE CONVICTION WAS NOT SEALED.

40 2. ALLEGED AS AN ELEMENT OF AN OFFENSE.

41 3. USED AS A HISTORICAL PRIOR FELONY CONVICTION.

42 4. PLEADED AND PROVED IN ANY SUBSEQUENT PROSECUTION OF THE PERSON
43 BY THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE FOR ANY OFFENSE.

44 C. EXCEPT AS PROVIDED IN SUBSECTION E, F, G, L, N OR O OF THIS
45 SECTION, A PERSON WHO IS:

1 1. CONVICTED OF AN OFFENSE MAY PETITION THE COURT THAT PRONOUNCED
2 SENTENCE TO SEAL THE PERSON'S RECORD OF ARREST, CONVICTION AND SENTENCE.
3 THE COURT SHALL GRANT THE PETITION IF THE COURT DETERMINES THAT GRANTING
4 THE PETITION IS IN THE BEST INTEREST OF THE PETITIONER AND PUBLIC SAFETY.

5 2. INDICTED FOR AN OFFENSE BUT AGAINST WHOM CHARGES ARE DISMISSED,
6 WHO IS FOUND NOT GUILTY OR WHOSE CONVICTION IS VACATED MAY PETITION THE
7 SUPERIOR COURT IN THE COUNTY IN WHICH THE INDICTMENT WAS FILED TO SEAL THE
8 PERSON'S ARREST RECORD OR COURT RECORD, OR BOTH.

9 D. UNLESS THE PETITIONER REQUESTS A HEARING, THE COURT MAY GRANT OR
10 DENY A PETITION TO SEAL A CRIMINAL RECORD WITHOUT A HEARING. THE COURT
11 MAY DISMISS A PETITION THAT DOES NOT MEET THE REQUIREMENTS PRESCRIBED IN
12 SUBSECTIONS E, F, G, L, N AND O OF THIS SECTION WITHOUT A HEARING. THE
13 COURT SHALL PROVIDE A COPY OF THE PETITION TO SEAL A CRIMINAL RECORD TO
14 THE PROSECUTOR. THE PROSECUTOR MAY RESPOND TO THE PETITION AND REQUEST A
15 HEARING. THE VICTIM HAS A RIGHT TO BE PRESENT AND HEARD AT ANY PROCEEDING
16 IN WHICH THE DEFENDANT HAS FILED A PETITION TO SEAL A CRIMINAL RECORD. IF
17 THE VICTIM HAS MADE A REQUEST FOR POSTCONVICTION NOTICE, THE PROSECUTOR
18 SHALL PROVIDE THE VICTIM WITH NOTICE OF THE DEFENDANT'S PETITION AND OF
19 THE VICTIM'S RIGHTS UNDER THIS SECTION.

20 E. AT THE TIME OF SENTENCING, THE COURT SHALL INFORM THE PERSON IN
21 WRITING OF THE RIGHT TO PETITION THE COURT FOR AN ORDER THAT SEALS THE
22 PERSON'S ARREST, CONVICTION AND SENTENCING RECORDS. A PERSON WHO WAS
23 CONVICTED OF AN OFFENSE AND WHO HAS NOT SUBSEQUENTLY BEEN CONVICTED OF ANY
24 OTHER OFFENSE EXCEPT A MOVING CRIMINAL TRAFFIC OFFENSE, EXCLUDING A
25 CONVICTION FOR A VIOLATION OF SECTION 28-1381, 28-1382 OR 28-1383, MAY
26 PETITION THE COURT TO SEAL THE PERSON'S RECORD OF ARREST, CONVICTION AND
27 SENTENCE AFTER THE PERSON COMPLETES ALL OF THE TERMS AND CONDITIONS OF THE
28 PERSON'S SENTENCE AND THE FOLLOWING PERIOD OF TIME HAS PASSED SINCE THE
29 PERSON COMPLETED THE CONDITIONS OF PROBATION OR SENTENCE AND DISCHARGE BY
30 THE COURT:

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

35 F. NOTWITHSTANDING SUBSECTION E OF THIS SECTION, IF THE PERSON HAS
36 A PRIOR HISTORICAL FELONY CONVICTION, THE PERSON MAY PETITION THE COURT TO
37 SEAL THE PERSON'S RECORD OF ARREST, CONVICTION AND SENTENCE PURSUANT TO
38 SUBSECTION E OF THIS SECTION AFTER THE FOLLOWING ADDITIONAL LENGTHS OF
39 TIME:

- 40 1. IF THE PERSON HAS ONE HISTORICAL PRIOR FELONY CONVICTION, AN
41 ADDITIONAL FIVE YEARS.
- 42 2. IF THE PERSON HAS TWO HISTORICAL PRIOR FELONY CONVICTIONS, AN
43 ADDITIONAL SEVEN YEARS.
- 44 3. IF THE PERSON HAS THREE OR MORE HISTORICAL PRIOR FELONY
45 CONVICTIONS, AN ADDITIONAL TEN YEARS.

1 G. A PERSON WHO IS CONVICTED OF TWO OR MORE OFFENSES MAY NOT
2 PETITION THE COURT TO SEAL A CRIMINAL RECORD UNTIL THE PERIOD OF TIME
3 PRESCRIBED IN SUBSECTION E OF THIS SECTION HAS PASSED FOR EACH CONVICTION.

4 H. AFTER A PETITION TO SEAL A CRIMINAL RECORD IS FILED, THE COURT
5 SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY AND REQUEST THE DEPARTMENT TO
6 PREPARE AND SUBMIT A REPORT TO THE COURT THAT INCLUDES ALL OF THE
7 PETITIONER'S STATE AND FEDERAL ARRESTS, PROSECUTIONS AND CONVICTIONS AND
8 ANY OTHER INFORMATION THAT THE COURT REQUESTS OR THAT THE DEPARTMENT
9 BELIEVES WILL ASSIST THE COURT IN MAKING ITS DETERMINATION. THE DIRECTOR
10 MAY CHARGE A FEE DETERMINED BY THE DIRECTOR FOR THE INVESTIGATION UNLESS
11 THE PETITIONER IS INDIGENT OR HAS BEEN FOUND NOT GUILTY OR THE CASE WAS
12 DISMISSED OR NOT PROSECUTED AND THE PETITION IS FILED PURSUANT TO
13 SUBSECTION C, PARAGRAPH 2 OF THIS SECTION.

14 I. IF THE COURT GRANTS A PETITION TO SEAL A CRIMINAL RECORD:

15 1. THE COURT SHALL ISSUE AN ORDER SEALING THE RECORDS OF THE
16 PETITIONER'S ARREST, CONVICTION AND SENTENCE AND DIRECTING THE CLERK OF
17 THE COURT TO NOTIFY THE DEPARTMENT OF PUBLIC SAFETY, THE PROSECUTOR AND
18 THE ARRESTING LAW ENFORCEMENT AGENCY, IF APPLICABLE, OF THE SEALING ORDER.

19 2. ON ORDER OF A COURT, THE CLERK OF THE COURT SHALL SEAL ALL
20 RECORDS RELATING TO THE ARREST, CONVICTION AND SENTENCE.

21 3. THE DEPARTMENT OF PUBLIC SAFETY SHALL SEAL AND SEPARATE THE
22 CRIMINAL RECORD FROM THE DEPARTMENT'S RECORDS AND INFORM ALL APPROPRIATE
23 STATE AND FEDERAL LAW ENFORCEMENT AGENCIES OF THE SEALING. THE DEPARTMENT
24 MAY CHARGE THE SUCCESSFUL PETITIONER A FEE DETERMINED BY THE DIRECTOR TO
25 RESEARCH AND CORRECT THE PETITIONER'S CRIMINAL HISTORY RECORD UNLESS THE
26 PETITIONER IS INDIGENT OR HAS BEEN FOUND NOT GUILTY OR THE CASE HAS BEEN
27 DISMISSED OR NOT PROSECUTED AND THE PETITION IS FILED PURSUANT TO
28 SUBSECTION C, PARAGRAPH 2 OF THIS SECTION.

29 4. THE ARRESTING AND PROSECUTING AGENCIES SHALL CLEARLY IDENTIFY IN
30 EACH AGENCY'S FILES AND ELECTRONIC RECORDS THAT THE PETITIONER'S ARREST OR
31 CONVICTION AND SENTENCE IS SEALED.

32 5. A PERSON WHOSE CONVICTION IS SEALED PURSUANT TO THIS SECTION MAY
33 STATE, IN ALL INSTANCES, THAT THE PERSON HAS NEVER BEEN ARRESTED FOR,
34 CHARGED WITH OR CONVICTED OF THE CRIME THAT IS THE SUBJECT OF THE ARREST
35 OR CONVICTION, INCLUDING IN RESPONSE TO QUESTIONS ON EMPLOYMENT, HOUSING,
36 FINANCIAL AID OR LOAN APPLICATIONS UNLESS ANY OF THE FOLLOWING APPLIES:

37 (a) THE PERSON IS SUBMITTING AN APPLICATION FOR EMPLOYMENT THAT
38 REQUIRES A FINGERPRINT CLEARANCE CARD PURSUANT TO TITLE 41, CHAPTER 12,
39 ARTICLE 3.1.

40 (b) THE SEALED CONVICTION IS FOR A DRUG OR DRUG PARAPHERNALIA
41 RELATED OFFENSE AND THE PERSON IS APPLYING FOR A JOB THAT REQUIRES
42 HANDLING OR ADMINISTERING PRESCRIPTION DRUGS.

43 (c) THE SEALED CONVICTION IS FOR BURGLARY OR THEFT FROM A
44 RESIDENTIAL OR NONRESIDENTIAL STRUCTURE AND THE PERSON IS APPLYING FOR A

1 JOB THAT REQUIRES ENTERING INTO AND PERFORMING SERVICES INSIDE OF A
2 RESIDENTIAL STRUCTURE.

3 (d) THE SEALED CONVICTION INVOLVED CHILD ABUSE OR AGGRAVATED
4 ASSAULT AND THE PERSON IS APPLYING FOR A JOB INVOLVING SUPERVISING,
5 EDUCATING OR ADMINISTERING CARE TO A MINOR.

6 (e) THE SEALED CONVICTION INVOLVED VULNERABLE ADULT ABUSE AND THE
7 PERSON IS APPLYING FOR A JOB INVOLVING SUPERVISING OR ADMINISTERING CARE
8 TO A VULNERABLE ADULT OR A PERSON WHO IS AT LEAST SIXTY-FIVE YEARS OF AGE.

9 (f) THE SEALED CONVICTION INVOLVED A VIOLATION OF SECTION 5-395.01,
10 5-396, 5-397, 13-1814, 28-1381, 28-1382, 28-1383, 28-8282, 28-8284,
11 28-8286, 28-8287 OR 28-8288 AND THE PERSON IS APPLYING FOR A JOB INVOLVING
12 THE COMMERCIAL OR PRIVATE OPERATION OF A MOTOR VEHICLE, BOAT OR AIRPLANE.

13 (g) THE SEALED FELONY CONVICTION INVOLVES THEFT, THEFT OF MEANS OF
14 TRANSPORTATION, FORGERY, TAKING THE IDENTITY OF ANOTHER OR FRAUDULENT
15 SCHEMES AND ARTIFICES AND THE PERSON IS APPLYING FOR A JOB INVOLVING
16 ACCOUNTING, OVERSEEING, TRANSPORTING, HANDLING OR MANAGING ANOTHER
17 PERSON'S MONEY OR FINANCIAL ASSETS.

18 6. THE PERSON'S EMPLOYER IS NOT LIABLE FOR HIRING OR CONTRACTING
19 WITH THE PERSON AS PRESCRIBED IN SECTION 12-558.03.

20 7. THE PERSON'S LANDLORD IS NOT LIABLE FOR RENTING OR LEASING
21 PROPERTY TO THE PERSON AS PRESCRIBED IN SECTION 12-558.04.

22 J. IF THE RECORD OF A PERSON'S ARREST, CONVICTION OR SENTENCE IS
23 SEALED PURSUANT TO THIS SECTION, THE RECORD SHALL BE MADE AVAILABLE FOR
24 THE PURPOSES LISTED IN SUBSECTION B OF THIS SECTION AND TO THE FOLLOWING:

25 1. THE PERSON WHOSE RECORD IS SEALED AND THE PERSON'S ATTORNEY.

26 2. A LAW ENFORCEMENT AGENCY CONDUCTING A CRIMINAL INVESTIGATION.

27 3. A PROSECUTING AGENCY TO DETERMINE IF A CRIMINAL CHARGE SHOULD BE
28 FILED AND FOR PROSECUTING A CRIMINAL CASE.

29 4. A PROBATION DEPARTMENT OR IN THE PREPARATION OF A PRESENTENCE
30 REPORT.

31 5. A COURT FOR SENTENCING A PERSON.

32 6. THE STATE DEPARTMENT OF CORRECTIONS IN THE MANAGEMENT OF A
33 PERSON WHO IS UNDER THE DEPARTMENT'S JURISDICTION.

34 K. THIS SECTION DOES NOT REQUIRE THE SUPREME COURT OR THE COURT OF
35 APPEALS TO SEAL ANY RECORD.

36 L. IF THE COURT DENIES A PETITION TO SEAL A CRIMINAL RECORD, A NEW
37 PETITION MAY NOT BE FILED UNTIL THREE YEARS AFTER THE DATE OF THE DENIAL.

38 M. A CONVICTION FOR AN OFFENSE THAT IS COMMITTED IN ANOTHER
39 JURISDICTION AND THAT IF COMMITTED IN THIS STATE WOULD NOT CONSTITUTE AN
40 OFFENSE IN THIS STATE MAY NOT BE USED AGAINST THE PETITIONER OR PROHIBIT
41 THE PETITIONER FROM HAVING A RECORD SEALED.

42 N. IF THE PETITIONER IS CHARGED WITH AN OFFENSE AFTER FILING A
43 PETITION TO SEAL A RECORD AND THE OFFENSE COULD RESULT IN A CONVICTION
44 THAT CANNOT BE SEALED OR THAT COULD EXTEND THE TIME TO FILE A PETITION TO

1 SEAL A CRIMINAL RECORD, THE COURT MAY NOT GRANT OR DENY THE PETITION UNTIL
2 THE COURT DISPOSES OF THAT CHARGE.

3 0. THIS SECTION DOES NOT APPLY TO A PERSON WHO IS:

4 1. SENTENCED AS A DANGEROUS OFFENDER PURSUANT TO SECTION 13-704.

5 2. CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN
6 SECTION 13-705.

7 3. CONVICTED OF A SERIOUS OFFENSE OR VIOLENT OR AGGRAVATED FELONY
8 AS DEFINED IN SECTION 13-706.

9 4. CONVICTED OF ANY OFFENSE INVOLVING THE DISCHARGE, USE OR
10 THREATENING EXHIBITION OF A DEADLY WEAPON OR DANGEROUS INSTRUMENT OR
11 KNOWING INFILCTION OF SERIOUS PHYSICAL INJURY ON ANOTHER PERSON.

12 5. CONVICTED OF SEX TRAFFICKING PURSUANT TO SECTION 13-1307.

13 P. THIS SECTION DOES NOT AFFECT EITHER OF THE FOLLOWING:

14 1. THE RIGHT OF THE PERSON WHOSE RECORD IS SEALED TO APPEAL THE
15 CONVICTION OR SENTENCE OR TO RELY ON IT IN BAR OF ANY SUBSEQUENT
16 PROCEEDING FOR THE SAME OFFENSE.

17 2. THE RIGHT OF A LAW ENFORCEMENT AGENCY TO MAINTAIN AN ARREST AND
18 CONVICTION RECORD AND TO COMMUNICATE INFORMATION REGARDING THE SEALED
19 RECORD OF ARREST OR CONVICTION TO PROSECUTING AGENCIES AND OTHER LAW
20 ENFORCEMENT AGENCIES FOR LAWFUL INVESTIGATIVE PURPOSES OR IN DEFENSE OF A
21 CIVIL ACTION THAT ARISES OUT OF THE FACTS OF THE ARREST OR TO THE ARIZONA
22 PEACE OFFICER STANDARDS AND TRAINING BOARD SOLELY TO ASSIST THE BOARD IN
23 DETERMINING THE FITNESS OF A PERSON TO SERVE AS A PEACE OFFICER, EXCEPT
24 THAT IN ANY OF THESE CASES THE INFORMATION MAY NOT BE DISCLOSED TO ANY
25 OTHER PERSON.

26 Sec. 3. Section 13-4033, Arizona Revised Statutes, is amended to
27 read:

28 13-4033. Appeal by defendant

29 A. An appeal may be taken by the defendant only from:

30 1. A final judgment of conviction or verdict of guilty except
31 insane.

32 2. An order denying a motion for a new trial.

33 3. An order made after judgment affecting the substantial rights of
34 the party.

35 4. A sentence on the grounds that it is illegal or excessive.

36 5. AN ORDER DENYING A PETITION TO SEAL A CRIMINAL RECORD PURSUANT
37 TO SECTION 13-911.

38 B. In noncapital cases a defendant may not appeal from a judgment
39 or sentence that is entered pursuant to a plea agreement or an admission
40 to a probation violation.

41 C. A defendant may not appeal under subsection A, paragraph 1 or 2
42 if the defendant's absence prevents sentencing from occurring within
43 ninety days after conviction and the defendant fails to prove by clear and
44 convincing evidence at the time of sentencing that the absence was
45 involuntary.

1 Sec. 4. Applicability

2 Section 13-911, Arizona Revised Statutes, as added by this act,
3 applies to a person who is arrested, convicted or sentenced before, on or
4 after the effective date of this act.

5 Sec. 5. Appropriation; administrative office of the courts;
6 court programming costs

7 The sum of \$500,000 is appropriated from the state general fund in
8 fiscal year 2021-2022 to the administrative office of the courts to pay
9 for the costs of implementing section 13-911, Arizona Revised Statutes, as
10 added by this act.