

REFERENCE TITLE: *criminal conviction; set aside; applicability*

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

HB 2067

Introduced by
Representatives Roberts: Fillmore

AN ACT

AMENDING SECTION 13-905, ARIZONA REVISED STATUTES; RELATING TO CRIMINAL
CONVICTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-905, Arizona Revised Statutes, is amended to
3 read:

4 13-905. Setting aside judgment of convicted person on
5 discharge; application; release from disabilities;
6 firearm possession; exceptions

7 A. Except as provided in subsection ~~K~~ N 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 court to have the judgment of guilt set aside. The convicted person shall
11 be informed of this right at the time of sentencing. **THE COURT MAY ISSUE**
12 **AN ORDER THAT INCLUDES A CERTIFICATE OF SECOND CHANCE TO A PERSON WHOSE**
13 **JUDGMENT OF GUILT IS SET ASIDE PURSUANT TO SUBSECTION K OR L OF THIS**
14 **SECTION.**

15 B. The person or the person's attorney or probation officer may
16 apply to set aside the judgment. The clerk of the court may not charge a
17 filing fee for an application to have a judgment of guilt set aside.

18 C. The court shall consider the following factors when determining
19 whether to set aside the conviction:

20 1. The nature and circumstances of the offense that the conviction
21 is based on.

22 2. The applicant's compliance with the conditions of probation, the
23 sentence imposed and any state department of corrections' rules or
24 regulations, if applicable.

25 3. Any prior or subsequent convictions.

26 4. The victim's input and the status of victim restitution, if any.

27 5. The length of time that has elapsed since the completion of the
28 applicant's sentence.

29 6. The applicant's age at the time of the conviction.

30 7. Any other factor that is relevant to the application.

31 D. If the application is granted, the court shall set aside the
32 judgment of guilt, dismiss the complaint, information or indictment and
33 order that the person be released from all penalties and disabilities
34 resulting from the conviction except those imposed by:

35 1. The department of transportation pursuant to section 28-3304,
36 28-3305, 28-3306, 28-3307, 28-3308, 28-3312 or 28-3319.

37 2. The game and fish commission pursuant to section 17-314 or
38 17-340.

39 E. A conviction that is set aside may be:

40 1. Used as a conviction if the conviction would be admissible had
41 it not been set aside.

42 2. Alleged as an element of an offense.

43 3. Used as a prior conviction.

44 4. Pledged and proved in any subsequent prosecution of the person
45 by this state or any political subdivision of this state for any offense.

1 5. Used by the department of transportation in enforcing section
2 28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312 or 28-3319 as if the
3 judgment of guilt had not been set aside.

4 F. The clerk of the court must notify the department of public
5 safety if a conviction is set aside. The department of public safety must
6 update the person's criminal history with an annotation that the
7 conviction has been set aside **AND, IF APPLICABLE, A CERTIFICATE OF SECOND**
8 **CHANCE HAS BEEN ISSUED** but may not redact or remove any part of the
9 person's record.

10 G. This section does not:

11 1. Require a law enforcement agency to redact or remove a record or
12 information from the record of a person whose conviction is set aside.

13 2. Preclude the department of public safety or the board of
14 fingerprinting from considering a conviction that has been set aside when
15 evaluating an application for a fingerprint clearance card pursuant to
16 section 41-1758.03 or 41-1758.07.

17 **H. IF THE STATE OR THE VICTIM OBJECTS TO AN APPLICATION TO HAVE A**
18 **JUDGMENT OF GUILT SET ASIDE, AN OBJECTION TO THE APPLICATION MUST BE FILED**
19 **WITHIN THIRTY DAYS AFTER THE APPLICATION IS FILED WITH THE COURT. IF AN**
20 **OBJECTION IS FILED, THE COURT MAY SET A HEARING.**

21 ~~H.~~ I. If the court denies an application to have a judgment of
22 guilt set aside, the court shall state its reasons for the denial in
23 writing and on the record.

24 ~~I.~~ J. A victim has the right to be present and be heard at any
25 proceeding in which the defendant has filed an application to have a
26 judgment of guilt set aside pursuant to this section. If the victim has
27 made a request for postconviction notice, the attorney for the state shall
28 provide the victim with notice of the defendant's application, **WHETHER THE**
29 **PERSON IS ELIGIBLE FOR A CERTIFICATE OF SECOND CHANCE** and of the rights
30 provided to the victim in this section.

31 **K. IF THE COURT GRANTS THE APPLICATION TO SET ASIDE THE JUDGMENT OF**
32 **GUILT, THE COURT'S ORDER MUST INCLUDE A CERTIFICATE OF SECOND CHANCE IF**
33 **THE PERSON HAS NOT PREVIOUSLY RECEIVED A CERTIFICATE OF SECOND CHANCE AND**
34 **THE PERSON WAS CONVICTED OF A MISDEMEANOR, IF THE PERSON WAS CONVICTED OF**
35 **A CLASS 4, 5 OR 6 FELONY AND AT LEAST TWO YEARS HAVE ELAPSED SINCE THE**
36 **PERSON FULFILLED THE CONDITIONS OF PROBATION OR SENTENCE OR IF THE PERSON**
37 **WAS CONVICTED OF A CLASS 2 OR 3 FELONY AND AT LEAST FIVE YEARS HAVE**
38 **ELAPSED SINCE THE PERSON FULFILLED THE CONDITIONS OF PROBATION OR**
39 **SENTENCE. THE CERTIFICATE OF SECOND CHANCE:**

40 1. **UNLESS SPECIFICALLY EXCLUDED BY THIS SECTION, RELEASES THE**
41 **PERSON FROM ALL BARRIERS AND DISABILITIES IN OBTAINING AN OCCUPATIONAL**
42 **LICENSE ISSUED UNDER TITLE 32 THAT RESULTED FROM THE CONVICTION IF THE**
43 **PERSON IS OTHERWISE QUALIFIED.**

44 2. **PROVIDES AN EMPLOYER OF THE PERSON WITH ALL OF THE PROTECTIONS**
45 **THAT ARE PROVIDED PURSUANT TO SECTION 12-558.03.**

1 3. PROVIDES ANOTHER PERSON OR AN ENTITY THAT PROVIDES HOUSING TO
2 THE PERSON WITH ALL OF THE PROTECTIONS LIMITING THE INTRODUCTION OF
3 EVIDENCE THAT ARE PROVIDED TO AN EMPLOYER PURSUANT TO SECTION 12-558.03,
4 SUBSECTION B.

5 4. IS NOT A RECOMMENDATION OR SPONSORSHIP FOR OR A PROMOTION OF THE
6 PERSON WHO POSSESSES THE CERTIFICATE OF SECOND CHANCE WHEN APPLYING FOR AN
7 OCCUPATIONAL LICENSE, EMPLOYMENT OR HOUSING.

8 L. IF THE COURT DOES NOT ISSUE AN ORDER THAT INCLUDES A CERTIFICATE
9 OF SECOND CHANCE WHEN THE PERSON'S CONVICTION IS SET ASIDE, THE PERSON MAY
10 APPLY TO THE COURT FOR A CERTIFICATE OF SECOND CHANCE AFTER MEETING THE
11 REQUIREMENTS PRESCRIBED IN SUBSECTION K OF THIS SECTION. IF A VICTIM HAS
12 MADE A REQUEST FOR POSTCONVICTION NOTICE, THE ATTORNEY FOR THE STATE SHALL
13 PROVIDE THE VICTIM WITH NOTICE OF THE PERSON'S APPLICATION FOR A
14 CERTIFICATE OF SECOND CHANCE AND THE VICTIM'S RIGHTS UNDER THIS SECTION.

15 ~~J.~~ M. Notwithstanding section 13-910, if a conviction is set
16 aside, the person's right to possess a firearm is restored. This
17 subsection does not apply to a person who was convicted of a serious
18 offense as defined in section 13-706.

19 ~~K.~~ N. This section does not apply to a person who was convicted of
20 any of the following:

- 21 1. A dangerous offense.
- 22 2. An offense for which the person is required or ordered by the
23 court to register pursuant to section 13-3821.
- 24 3. An offense for which there has been a finding of sexual
25 motivation pursuant to section 13-118.
- 26 4. A felony offense in which the victim is a minor under fifteen
27 years of age.
- 28 5. An offense in violation of section 28-3473, any local ordinance
29 relating to stopping, standing or operation of a vehicle or title 28,
30 chapter 3, except a violation of section 28-693 or any local ordinance
31 relating to the same subject matter as section 28-693.