

House Engrossed Senate Bill

~~gold; silver; currency; study committee~~
(now: subsequent felony; sealing case records)

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SENATE BILL 1639

AN ACT

AMENDING SECTION 13-911, ARIZONA REVISED STATUTES; RELATING TO SEALING
CASE RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-911, Arizona Revised Statutes, is amended to
3 read:

4 13-911. Sealing of arrest, conviction and sentencing records;
5 requirements; fee; appeal; definition

6 A. A person may file a petition to seal all case records related to
7 a criminal offense if the person was:

8 1. Convicted of a criminal offense and has completed all of the
9 terms and conditions of the sentence that was imposed by the court,
10 including the payment of all monetary obligations and restitution to all
11 victims.

12 2. Charged with a criminal offense and the charge was subsequently
13 dismissed or resulted in a not guilty verdict at a trial.

14 3. Arrested for a criminal offense and no charges were filed.

15 B. All case records that are sealed pursuant to this section may
16 be:

17 1. Alleged as an element of an offense.

18 2. Used as a historical prior felony conviction.

19 3. Admissible for impeaching any party or witness in a subsequent
20 trial.

21 4. Used to enhance the sentence for a subsequent felony.

22 5. Used to enhance the sentence pursuant to sections 28-1381 and
23 28-1382.

24 6. Pleaded and proved in any subsequent prosecution of the person
25 by this state or a political subdivision of this state.

26 7. Used as a conviction if the conviction would be admissible if
27 the conviction was not sealed.

28 C. The person shall file a petition to seal all case records in one
29 of the following:

30 1. The court in which the person was convicted of an offense.

31 2. The court in which an indictment, information, criminal citation
32 or complaint against the person was filed and the charges were dismissed,
33 the person was found not guilty or the person's conviction was vacated,
34 except that if the complaint was filed in a justice court and a subsequent
35 information was filed, the petition must be filed in the superior court.

36 3. The court in which the person had an initial appearance if
37 charges were not filed.

38 4. The superior court in the county where a person was arrested if
39 the person did not have an initial appearance and no charges were filed.

40 D. The court may not grant or deny a petition to seal a person's
41 case records until ~~thirty~~ SIXTY calendar days after the court receives the
42 petition unless the court receives notice that both the prosecutor and all
43 victims who have made a request for postconviction notice do not object to
44 the petition. Unless the petitioner, prosecutor or victim requests a
45 hearing, the court may grant or deny a petition to seal case records

1 without a hearing. The court may dismiss a petition that does not meet
2 the requirements prescribed in this section without a hearing. The court
3 shall grant the petition if the court determines that granting the
4 petition is in the best interests of the petitioner and the public's
5 safety. The clerk of the court shall provide a copy of the petition to
6 seal case records to the prosecutor. The prosecutor may respond to the
7 petition and request a hearing. The victim has a right to be present and
8 heard at any proceeding in which the defendant has filed a petition to
9 seal case records. If the victim has made a request for postconviction
10 notice, the prosecutor shall provide the victim with notice of the
11 defendant's petition and of the victim's rights under this section.

12 E. At the time of sentencing, the court shall inform the person on
13 the record that the person may be eligible to petition the court for an
14 order that seals all case records of the person's arrest, conviction and
15 sentence that are related to the offense pursuant to this section and
16 shall provide this notice in writing. A person who was convicted of ~~an~~
17 ~~ANY ELIGIBLE~~ offense ~~and who has not subsequently been convicted of any~~
18 ~~other offense except a misdemeanor violation included in title 28,~~
19 ~~excluding a conviction for a violation of section 28-1381, 28-1382 or~~
20 ~~28-1383,~~ may petition the court to seal the person's records of arrest,
21 conviction and sentence after the person completes all of the **NONMONETARY**
22 terms and conditions of the person's sentence, ~~including paying all fines,~~
23 ~~fees and restitution that are~~ ordered by the court, and the following
24 period of time has passed since the person completed the **NONMONETARY**
25 conditions of probation or sentence and was discharged by the court:

- 26 1. Ten years for a class 2 or 3 felony.
- 27 2. Five years for a class 4, 5 or 6 felony.
- 28 3. Three years for a class 1 misdemeanor.
- 29 4. Two years for a class 2 or 3 misdemeanor.

30 F. ~~Notwithstanding subsection E of this section, if the person has~~
31 ~~a prior historical felony conviction, the~~ A person **WHOSE CASE RECORDS HAVE**
32 **BEEN SEALED PURSUANT TO SUBSECTION E OF THIS SECTION AND WHO COMMITS A**
33 **SUBSEQUENT FELONY OFFENSE** may petition the court **PURSUANT TO SUBSECTION E**
34 **OF THIS SECTION** to seal the person's records of arrest, conviction and
35 sentence ~~pursuant to subsection E of this section~~ **RELATING TO THE**
36 **SUBSEQUENT FELONY OFFENSE** after **THE APPLICABLE PERIOD OF TIME PRESCRIBED**
37 **IN SUBSECTION E OF THIS SECTION FOR THE SUBSEQUENT FELONY OFFENSE HAS**
38 **EXPIRED AND** an additional five years **HAVE PASSED.**

39 G. A PETITIONER IS REQUIRED TO HAVE PAID ALL FINES, FEES AND
40 RESTITUTION ORDERED BY THE COURT AT THE TIME OF FILING THE PETITION TO BE
41 ELIGIBLE TO SEAL CASE RECORDS PURSUANT TO THIS SECTION.

42 ~~G. A person who is convicted of two or more offenses may not~~
43 ~~petition the court to seal the person's case records until the period of~~
44 ~~time prescribed in subsection E of this section has passed for each~~
45 ~~conviction.~~

1 H. After a petition to seal case records is filed, the court shall
2 notify the department of public safety and request the department to
3 prepare and submit a report to the court that includes all of the
4 petitioner's state and federal arrests, prosecutions and convictions and
5 any other information that the court requests or that the department
6 believes will assist the court in making its determination. The director
7 may charge the petitioner a fee that is determined by the director for the
8 investigation unless the petitioner is indigent or has been found not
9 guilty or the case was dismissed or not prosecuted and the petition is
10 filed pursuant to subsection C, paragraph 2 or 3 of this section.

11 I. If the court grants a petition to seal case records:

12 1. The court shall issue an order sealing all records relating to
13 the petitioner's arrest, conviction and sentence and directing the clerk
14 of the court to notify the department of public safety and the prosecutor
15 of the sealing order.

16 2. On order of a court, the clerk of the court shall seal all case
17 records relating to the petitioner's arrest, conviction and sentence. A
18 court order to seal case records pursuant to this section is subject only
19 to the disclosure requirements in this section and shall be treated
20 differently than a record that is sealed pursuant to any other statute or
21 court rule. The clerk shall create and manage a system for sealing case
22 records pursuant to this section and for providing sealed case records to
23 an entity or person that is listed in subsection J of this section and
24 that requests the record. On the request of an entity or person listed in
25 subsection J of this section, the clerk shall provide the entity or person
26 with any sealed case records. The clerk may not provide sealed case
27 records pursuant to this section to any person or entity that is not
28 listed in subsection J of this section.

29 3. The department of public safety shall designate the case records
30 as sealed within the department's records and inform all appropriate state
31 and federal law enforcement agencies of the sealing. The department may
32 not share or provide sealed case records with any person or entity or for
33 any purpose that is not listed in subsections B and J of this section.
34 The department may charge the successful petitioner a fee determined by
35 the director to research and correct the petitioner's criminal history
36 record unless the petitioner is indigent or has been found not guilty or
37 the case has been dismissed or not prosecuted and the petition is filed
38 pursuant to subsection C, paragraph 2 or 3 of this section.

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 records are sealed.

42 5. A person whose records are sealed pursuant to this section may
43 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 arrest

1 or conviction, including in response to questions on employment, housing,
2 financial aid or loan applications unless any of the following applies:

3 (a) The person is submitting an application that requires a
4 fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

5 (b) The sealed case records involved a CLASS 2 OR CLASS 3 FELONY
6 violation of chapter 34 of this title.

7 (c) The sealed case records involved burglary ~~OR~~ UNDER SECTION
8 13-1506, 13-1507 OR 13-1508, theft UNDER SECTION 13-1802 OR ORGANIZED
9 RETAIL THEFT UNDER SECTION 13-1819 from a residential or nonresidential
10 structure and the person is applying for a job that requires entering into
11 and performing services inside of a residential structure.

12 (d) The sealed case records involved child abuse UNDER SECTION
13 13-3623 or aggravated assault UNDER SECTION 13-1204 and the person is
14 applying for a job involving supervising, educating or administering care
15 to a minor.

16 (e) The sealed case records involved vulnerable adult abuse UNDER
17 SECTION 13-3623 and the person is applying for a job involving supervising
18 or administering care to a vulnerable adult or a person who is at least
19 sixty-five years of age.

20 (f) The sealed case records involved a violation of section
21 5-395.01, 5-396, 5-397, 13-1814, 28-1381, 28-1382, 28-1383, 28-8282,
22 28-8284, 28-8286, 28-8287 or 28-8288 and the person is applying for a job
23 involving the commercial or private operation of a motor vehicle, boat or
24 airplane.

25 (g) The sealed case records involved ~~theft, theft of means of~~
26 ~~transportation, forgery, taking the identity of another or fraudulent~~
27 ~~schemes and artifices~~ A VIOLATION OF CHAPTER 18, 19, 20, 21, 22 OR 23 OF
28 THIS TITLE OR TELECOMMUNICATION FRAUD UNDER SECTION 13-3707 and the person
29 is applying for a job involving accounting, overseeing, transporting,
30 handling or managing another person's money or financial assets.

31 (h) The person is applying for a position with a law enforcement
32 agency, a prosecutor's office, a court, a probation department, a child
33 welfare agency as defined in section 8-501, the department of child
34 safety, the department of juvenile corrections or the state department of
35 corrections.

36 (i) The person is undergoing a background check for the placement
37 with that person of a child who is in the custody of the department of
38 child safety.

39 (j) The disclosure is required by a state or federal law.

40 (k) The disclosure is required to comply with program integrity
41 provisions of medicare, medicaid or any other federal health care program.

42 6. The person's employer is not liable for hiring or contracting
43 with the person as prescribed in section 12-558.03.

1 J. If the person's case records are sealed pursuant to this
2 section, the records shall be made available for the purposes listed in
3 subsection B of this section and to the following:

4 1. The person whose records are sealed and any attorney who has
5 filed a notice of appearance on behalf of the person whose records are
6 sealed.

7 2. The victim in the case if the victim has exercised victims'
8 rights pursuant to section 13-4414.

9 3. Any of the following if the purpose relates to the operation of
10 the requesting party's official duties or internal hiring practices, or
11 both:

12 (a) A law enforcement agency.

13 (b) A prosecuting agency. On request of a person who is charged
14 with a criminal offense or that person's attorney of record, a prosecuting
15 agency shall provide the sealed case records of any person whom the
16 prosecuting agency intends to call as a witness in that person's
17 prosecution.

18 (c) A probation department or any agency that is responsible for
19 the preparation of a presentence report.

20 (d) A court.

21 (e) The department of child safety or a child welfare agency as
22 defined in section 8-501.

23 (f) The department of juvenile corrections.

24 (g) The state department of corrections or any other correctional
25 facility in this state.

26 (h) The clerk of the court or any department that is responsible
27 for maintaining court records.

28 K. This section does not require the supreme court or the court of
29 appeals to seal any record.

30 L. If the court denies a petition to seal case records, a person
31 may not file a new petition until three years after the date of the
32 denial.

33 M. A conviction for an offense that is committed in another
34 jurisdiction and that if committed in this state would not constitute an
35 offense in this state may not be used against the petitioner or prohibit
36 the petitioner from having a record sealed. For the purposes of this
37 section, the classification of an offense committed in another
38 jurisdiction has the classification that the offense would have if
39 committed in this state.

40 N. If the petitioner **HAS A CHARGE PENDING OR** is charged with an
41 offense after filing a petition to seal case records **PURSUANT TO**
42 **SUBSECTION C, PARAGRAPH 3 OR 4 OF THIS SECTION** and the **offense CHARGE**
43 could result in a conviction that cannot be sealed or that could extend
44 the time to file a petition to seal case records, the court may not grant
45 or deny the petition until the court disposes of that charge.

1 ~~0. This section does not apply to a person who is:~~
2 ~~1. Sentenced as a dangerous offender pursuant to section 13-704.~~
3 0. THE FOLLOWING OFFENSES ARE NOT ELIGIBLE TO BE SEALED PURSUANT TO
4 THIS SECTION:
5 1. A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.
6 2. ~~Convicted of~~ A dangerous crime against children as defined in
7 section 13-705.
8 3. ~~Convicted of~~ A serious offense or violent or aggravated felony
9 as defined in section 13-706.
10 4. ~~Convicted of~~ Any offense that has either of the following as an
11 element of the offense:
12 (a) The discharge, use or threatening exhibition of a deadly weapon
13 or dangerous instrument.
14 (b) The knowing infliction of serious physical injury on another
15 person.
16 5. ~~Convicted of~~ Sex trafficking pursuant to section 13-1307.
17 6. ~~Convicted of~~ A class 2, 3, 4 or 5 felony offense that is
18 included in chapter 14 or 35.1 of this title.
19 P. This section does not affect any of the following:
20 1. The right of the person whose case records are sealed to appeal
21 the conviction or sentence or to rely on it in bar of any subsequent
22 proceeding for the same offense.
23 2. The right of a law enforcement agency to maintain an arrest and
24 conviction record and to communicate information regarding the sealed
25 record of arrest or conviction to prosecuting agencies, courts, probation
26 departments and other law enforcement agencies for a purpose listed in
27 subsection J of this section or in defense of a civil action that arises
28 out of the facts of the arrest or to the Arizona peace officer standards
29 and training board solely to assist the board in determining the fitness
30 of a person to serve as a peace officer, except that in any of these cases
31 the information may not be disclosed to any person or entity that is not
32 listed in subsection J of this section.
33 3. The department of public safety or the board of fingerprinting
34 from considering a conviction that is sealed pursuant to this section when
35 evaluating an application for a fingerprint clearance card pursuant to
36 section 41-1758.03 or 41-1758.07, EXCEPT THAT THE BOARD OF FINGERPRINTING
37 SHALL CONSIDER SEALED CASE RECORDS AS A MITIGATING CIRCUMSTANCE IN
38 DETERMINING WHETHER TO GRANT A GOOD CAUSE EXCEPTION PURSUANT TO SECTION
39 41-619.55.
40 4. A court from issuing a lifetime injunction pursuant to section
41 13-719 or the validity of a lifetime injunction that was issued pursuant
42 to section 13-719.
43 Q. For the purposes of this section, "case records" means all
44 records that pertain to a person's arrest, conviction and sentence for a
45 particular offense and that may be sealed pursuant to this section.