

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1639

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

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 be:

16 1. Alleged as an element of an offense.

17 2. Used as a historical prior felony conviction.

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

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

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

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

3 7. Used as a conviction if the conviction would be admissible if the
4 conviction was not sealed.

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

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

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

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

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

17 D. The court may not grant or deny a petition to seal a person's
18 case records until thirty calendar days after the court receives the
19 petition unless the court receives notice that both the prosecutor and all
20 victims who have made a request for postconviction notice do not object to
21 the petition. Unless the petitioner, prosecutor or victim requests a
22 hearing, the court may grant or deny a petition to seal case records
23 without a hearing. The court may dismiss a petition that does not meet the
24 requirements prescribed in this section without a hearing. The court shall
25 grant the petition if the court determines that granting the petition is in
26 the best interests of the petitioner and the public's safety. The clerk of
27 the court shall provide a copy of the petition to seal case records to the
28 prosecutor. The prosecutor may respond to the petition and request a
29 hearing. The victim has a right to be present and heard at any proceeding
30 in which the defendant has filed a petition to seal case records. If the
31 victim has made a request for postconviction notice, the prosecutor shall

1 provide the victim with notice of the defendant's petition and of the
2 victim's rights under this section.

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

- 17 1. Ten years for a class 2 or 3 felony.
- 18 2. Five years for a class 4, 5 or 6 felony.
- 19 3. Three years for a class 1 misdemeanor.
- 20 4. Two years for a class 2 or 3 misdemeanor.

21 F. ~~Notwithstanding subsection E of this section, if the person has a~~
22 ~~prior historical felony conviction, the~~ A person WHOSE CASE RECORDS HAVE
23 BEEN SEALED PURSUANT TO SUBSECTION E OF THIS SECTION AND WHO COMMITS A
24 SUBSEQUENT FELONY OFFENSE may petition the court PURSUANT TO SUBSECTION E
25 OF THIS SECTION to seal the person's records of arrest, conviction and
26 sentence ~~pursuant to subsection E of this section~~ RELATING TO THE
27 SUBSEQUENT FELONY OFFENSE after THE APPLICABLE PERIOD OF TIME PRESCRIBED IN
28 SUBSECTION E OF THIS SECTION FOR THE SUBSEQUENT FELONY OFFENSE HAS EXPIRED
29 AND an additional five years HAVE PASSED.

30 ~~G. A person who is convicted of two or more offenses may not~~
31 ~~petition the court to seal the person's case records until the period of~~

1 ~~time prescribed in subsection E of this section has passed for each~~
2 ~~conviction.~~

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

13 ~~†~~ H. If the court grants a petition to seal case records:

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

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

31 3. The department of public safety shall designate the case records
32 as sealed within the department's records and inform all appropriate state

1 and federal law enforcement agencies of the sealing. The department may
2 not share or provide sealed case records with any person or entity or for
3 any purpose that is not listed in subsections B and ~~I~~ I of this section.
4 The department may charge the successful petitioner a fee determined by the
5 director to research and correct the petitioner's criminal history record
6 unless the petitioner is indigent or has been found not guilty or the case
7 has been dismissed or not prosecuted and the petition is filed pursuant to
8 subsection C, paragraph 2 or 3 of this section.

9 4. The arresting and prosecuting agencies shall clearly identify in
10 each agency's files and electronic records that the petitioner's arrest or
11 conviction and sentence records are sealed.

12 5. A person whose records are sealed pursuant to this section may
13 state, in all instances, that the person has never been arrested for,
14 charged with or convicted of the crime that is the subject of the arrest or
15 conviction, including in response to questions on employment, housing,
16 financial aid or loan applications unless any of the following applies:

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

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

21 (c) The sealed case records involved burglary ~~OR~~ **UNDER SECTION**
22 **13-1506, 13-1507 OR 13-1508**, theft **UNDER SECTION 13-1802 OR ORGANIZED**
23 **RETAIL THEFT UNDER SECTION 13-1819** from a residential or nonresidential
24 structure and the person is applying for a job that requires entering into
25 and performing services inside of a residential structure.

26 (d) The sealed case records involved child abuse **UNDER SECTION**
27 **13-3623** or aggravated assault **UNDER SECTION 13-1204** and the person is
28 applying for a job involving supervising, educating or administering care
29 to a minor.

30 (e) The sealed case records involved vulnerable adult abuse **UNDER**
31 **SECTION 13-3623** and the person is applying for a job involving supervising

1 or administering care to a vulnerable adult or a person who is at least
2 sixty-five years of age.

3 (f) The sealed case records involved a violation of section
4 5-395.01, 5-396, 5-397, 13-1814, 28-1381, 28-1382, 28-1383, 28-8282,
5 28-8284, 28-8286, 28-8287 or 28-8288 and the person is applying for a job
6 involving the commercial or private operation of a motor vehicle, boat or
7 airplane.

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

14 (h) The person is applying for a position with a law enforcement
15 agency, a prosecutor's office, a court, a probation department, a child
16 welfare agency as defined in section 8-501, the department of child safety,
17 the department of juvenile corrections or the state department of
18 corrections.

19 (i) The person is undergoing a background check for the placement
20 with that person of a child who is in the custody of the department of
21 child safety.

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

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

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

27 ~~†~~ I. If the person's case records are sealed pursuant to this
28 section, the records shall be made available for the purposes listed in
29 subsection B of this section and to the following:

30 1. The person whose records are sealed and any attorney who has
31 filed a notice of appearance on behalf of the person whose records are
32 sealed.

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

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

6 (a) A law enforcement agency.

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

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

14 (d) A court.

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

17 (f) The department of juvenile corrections.

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

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

22 ~~K.~~ J. This section does not require the supreme court or the court
23 of appeals to seal any record.

24 ~~L.~~ K. If the court denies a petition to seal case records, a person
25 may not file a new petition until three years after the date of the denial.

26 ~~M.~~ L. A conviction for an offense that is committed in another
27 jurisdiction and that if committed in this state would not constitute an
28 offense in this state may not be used against the petitioner or prohibit
29 the petitioner from having a record sealed. For the purposes of this
30 section, the classification of an offense committed in another jurisdiction
31 has the classification that the offense would have if committed in this
32 state.

1 ~~N.~~ M. If the petitioner is charged with an offense after filing a
2 petition to seal case records and the offense could result in a conviction
3 that cannot be sealed or that could extend the time to file a petition to
4 seal case records, the court may not grant or deny the petition until the
5 court disposes of that charge.

6 ~~0. This section does not apply to a person who is:~~

7 ~~1. Sentenced as a dangerous offender pursuant to section 13-704.~~

8 N. THE FOLLOWING OFFENSES ARE NOT ELIGIBLE TO BE SEALED PURSUANT TO
9 THIS SECTION:

10 1. A DANGEROUS OFFENSE AS DEFINED IN SECTION 13-105.

11 2. ~~Convicted of~~ A dangerous crime against children as defined in
12 section 13-705.

13 3. ~~Convicted of~~ A serious offense or violent or aggravated felony as
14 defined in section 13-706.

15 4. ~~Convicted of~~ Any offense that has either of the following as an
16 element of the offense:

17 (a) The discharge, use or threatening exhibition of a deadly weapon
18 or dangerous instrument.

19 (b) The knowing infliction of serious physical injury on another
20 person.

21 5. ~~Convicted of~~ Sex trafficking pursuant to section 13-1307.

22 6. ~~Convicted of~~ A class 2, 3, 4 or 5 felony offense that is included
23 in chapter 14 or 35.1 of this title.

24 ~~P.~~ 0. This section does not affect any of the following:

25 1. The right of the person whose case records are sealed to appeal
26 the conviction or sentence or to rely on it in bar of any subsequent
27 proceeding for the same offense.

28 2. The right of a law enforcement agency to maintain an arrest and
29 conviction record and to communicate information regarding the sealed
30 record of arrest or conviction to prosecuting agencies, courts, probation
31 departments and other law enforcement agencies for a purpose listed in
32 subsection ~~J~~ I of this section or in defense of a civil action that arises

1 out of the facts of the arrest or to the Arizona peace officer standards
2 and training board solely to assist the board in determining the fitness of
3 a person to serve as a peace officer, except that in any of these cases the
4 information may not be disclosed to any person or entity that is not listed
5 in subsection ~~I~~ I of this section.

6 3. The department of public safety or the board of fingerprinting
7 from considering a conviction that is sealed pursuant to this section when
8 evaluating an application for a fingerprint clearance card pursuant to
9 section 41-1758.03 or 41-1758.07, EXCEPT THAT THE BOARD OF FINGERPRINTING
10 SHALL CONSIDER SEALED CASE RECORDS AS A MITIGATING CIRCUMSTANCE IN
11 DETERMINING WHETHER TO GRANT A GOOD CAUSE EXCEPTION PURSUANT TO SECTION
12 41-619.55.

13 4. A court from issuing a lifetime injunction pursuant to section
14 13-719 or the validity of a lifetime injunction that was issued pursuant to
15 section 13-719.

16 ~~P~~ P. For the purposes of this section, "case records" means all
17 records that pertain to a person's arrest, conviction and sentence for a
18 particular offense and that may be sealed pursuant to this section."

19 Amend title to conform

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