

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-21-0029
PETITION TO AMEND RULES 4.1, 7.6,)
11.3, 26.10, 29.3, 29.7, and 41,) **FILED: 12/8/2021**
RULES OF CRIMINAL PROCEDURE)
)
)
_____)

**ORDER ADOPTING
ON A PERMANENT BASIS
AMENDMENTS TO VARIOUS RULES OF
CRIMINAL PROCEDURE**

On June 3, 2021, David K. Byers, Administrative Director of the Administrative Office of the Courts, filed a rule petition to amend, on an emergency basis, various rules of criminal procedure to conform to recent statutory enactments. On June 4, 2021, the Court granted Petitioner's request for expedited consideration and opened the petition for public comment until October 1, 2021.

Following the August 2021 Rules Agenda, the Court entered an order on August 25, 2021 adopting the rule changes on an emergency basis under Rule 28(h)(2) of the Rules of the Supreme Court of Arizona. All the amendments, except those to Rule 7.6, were ordered effective September 29, 2021. The amendment to Rule 7.6 was ordered effective January 1, 2022. The order further provided that the Court would consider whether to adopt the rule changes on a permanent basis during the December 2021 Rules Agenda.

Having received no comments, and remaining convinced that the rule amendments are appropriate,

IT IS ORDERED that the amendments to Rules 4.1, 7.6, 11.3, 26.10, 29.2, 29.3, 29.7, and 41, Form 31(b) of the Rules of Criminal Procedure, which the Court adopted on an emergency basis on August 25, 2021, are hereby adopted permanently in accordance with the attachment to this order, effective January 1, 2022. The attachment to this order is the same as the attachment to this Court's August 25, 2021 order.

DATED this 8th day of December, 2021.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:

Rule 28 Distribution

**** ****

David K Byers

ATTACHMENT¹

RULES OF CRIMINAL PROCEDURE

Rule 4.1. Procedure upon Arrest

(a) [No change]

(b) **On Arrest Without a Warrant.** A person arrested without a warrant must be taken before the nearest or most accessible magistrate either in the county of arrest or in the county where the offense was committed. A complaint, if not already filed, must be promptly prepared and filed. If a complaint is not filed within 48 hours after the initial appearance before the magistrate, the arrested person must be immediately released from custody and any pending preliminary hearing dates must be vacated.

(c) **On Arrest with a Warrant.**

(1) [No change]

(2) *Arrest in Another County.* If a person is arrested in a county other than the one where the warrant was issued, the person must be taken before the nearest or most accessible magistrate in the county of arrest or in the county where the offense was committed. If eligible for release as a matter of right, the person must then be released under Rule 7.2. If not released immediately, the arrested person must be taken to the issuing magistrate in the county where the warrant originated, or, if that magistrate is absent or unable to act, before the nearest or most accessible magistrate in the county where the warrant originated.

(d)-(e) [No change]

* * *

Rule 7.6. Transfer and Disposition of Bond

(a)-(b) [No change]

(c) **Forfeiture Procedure.**

(1) [No change]

(2) *Defendant's Failure to Appear.* If the court is informed that the defendant who is released on an appearance bond failed to appear for a required court appearance and the court issues a warrant for the defendant's arrest, the court, no later than 10 days after the warrant's issuance, must notify the surety and the bail bond agent who is responsible for the defendant's appearance. Notice must be by email if the surety or bail bond agent provided an email address, or to the physical address that is included in the undertaking of bail if no email address was provided.

¹ Additions to the text of the rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

(2-3) [No change in text]

(3-4) [No change in text]

(d) [No change]

* * *

Rule 11.3. Appointment of Experts

(a) **Appointment of Experts.**

(1) [No change]

(2) *Generally.* If the court finds that reasonable grounds exist for a competence examination, it must appoint one or more qualified mental health experts for a defendant charged with only a misdemeanor, or two or more qualified mental health experts for a defendant charged with a felony to:

(A)-(C) [No change]

(3)-(6) [No change]

(b)-(d) [No change]

* * *

Rule 26.10. Pronouncement of Judgment and Sentence

(a) [No change]

(b) **Sentence.** When the court pronounces sentence, it must:

(1)-(3) [No change]

(4) specify the beginning date for the term of imprisonment and the amount of time to be credited against the sentence as required by law; and

~~(5) for any felony offense or a violation of §§ 13-1802, 13-1805, 28-1381, or 28-1382, permanently affix the defendant's right index fingerprint to the sentencing document or order and~~

(6) [No change in text]

(c) **Fingerprinting.** For any felony offense or a violation of A.R.S. §§ 13-1802, 13-1805, 28-1381, or 28-1382, the court must arrange to permanently affix the defendant's right index fingerprint to the judgment of guilt and sentence document or minute order, or obtain the defendant's two fingerprint biometric-based identifier and record it in the court case file, at sentencing or, unless the court orders otherwise, no later than 30 days after sentencing.

* * *

Rule 29.2. Application

(a)-(c) [No change]

(d) Victim Notification. The victim has the right to be present and be heard at any proceeding in which the defendant has filed an application to have a judgment of conviction set aside. If the victim requested postconviction notice, the prosecuting agency must provide the victim with notice of the defendant's application, whether the defendant is eligible for a certificate of second chance, and of the rights provided to the victim. The prosecuting agency must provide notice to the victim of the opportunity to be heard if the victim requested post-conviction notification.

* * *

Rule 29.3. State's Response

No later than ~~60~~30 days after the application is filed, the State and victim may file a written response stating their reasons for opposing the application, if any. The State must send a copy of the response to the applicant's attorney or the applicant, if unrepresented.

* * *

Rule 29.7. Certificate of Second Chance.

(a) If the court grants an application to set aside the judgment of guilt, the court's order must include a certificate of second chance if the defendant has not previously received a certificate of second chance and

(1) the defendant was convicted of a misdemeanor;

(2) the defendant was convicted of a class 4, 5 or 6 felony and at least 2 years have elapsed since the defendant fulfilled the conditions of probation or sentence; or

(3) the defendant was convicted of a class 2 or 3 felony and at least 5 years have elapsed since the defendant fulfilled the conditions of probation or sentence.

(b) If the court does not issue an order that includes a certificate of second chance when the defendant's conviction is set aside, the defendant may apply to the court for a certificate of second chance after meeting the requirements in A.R.S. § 13-905(K). Rule 29.2 applies to such an application.

Rule 29.7-29.8. Special Provisions for Sex Trafficking Victims

[No change in text]

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RULE 41. FORMS

Form 31(b). Order Regarding Application to Set Aside Conviction and Restore Firearm Rights

_____ COURT OF ARIZONA
IN _____ COUNTY

STATE OF ARIZONA, Plaintiff -vs- _____ Defendant (FIRST, MI, LAST) Date of Birth: _____	Case Number: _____ ORDER REGARDING APPLICATION TO SET ASIDE CONVICTION AND RESTORATION OF FIREARM RIGHTS A.R.S. §§ 13-905 & 13-910
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Based upon the information presented to the Court, **THE COURT FINDS THAT:** (only those items marked)

The prosecutor has received a copy of the Application to Set Aside Conviction.

- The defendant **has met** all statutory requirements for ~~the application~~ setting aside the conviction; ~~OR~~ AND
- The defendant **has met** all statutory requirements for a Certificate of Second Chance
- The defendant **has not met** all statutory requirements for a Certificate of Second Chance

OR

- The defendant **has not met** all statutory requirements for ~~the application~~ setting aside the conviction.
- The defendant was convicted of a criminal offense not eligible to be set aside due to:
 - a dangerous offense.
 - an offense for which the person is required or ordered by the court to register pursuant to A.R.S. § 13-3821.
 - an offense for which there has been a finding of sexual motivation pursuant to A.R.S. § 13-118.

a felony offense in which the victim is a minor under fifteen years of age.

~~an offense in violation of section 28-3473, any local ordinance relating to stopping, standing, or operation of a vehicle, or title 28, chapter 3, except a violation of section 28-693 or any local ordinance relating to the same subject matter as section 28-693.~~

IT IS ORDERED:

DENYING the application to set aside conviction for the following reasons:

The defendant **has not met** all statutory requirements for the application.

The defendant was convicted of a criminal offense **not eligible** for a conviction to be set aside.

Other reasons:

GRANTING the application setting aside the judgment of guilt, dismissing the complaint, information, or indictment, and that the applicant be released from all penalties and disabilities resulting from the conviction **except those imposed by:**

a. The **Department of Transportation** pursuant to A.R.S. §§ 28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312, and 28-3319.

b. The **Game and Fish Commission** pursuant to A.R.S. §§ 17-314 or 17-340.

The applicant's right to possess a firearm is also **restored**.

OR

The applicant's right to possess a gun or firearm is **DENIED** due to the applicant's conviction for a serious offense as defined in section 13-706.

CERTIFICATE OF SECOND CHANCE

IT IS FURTHER ORDERED:

DENYING a certificate of second chance.

OR

GRANTING a certificate of second chance, and accordingly, pursuant to A.R.S. § 13-905(K):

1. Unless specifically excluded by A.R.S. § 13-905(K), the defendant is released from all barriers and disabilities in obtaining an occupational license issued under title 32 that resulted from the conviction if the defendant is otherwise qualified;

2. An employer of the defendant is provided with all of the protections that are provided pursuant to section A.R.S. § 12-558.03;

3. Another person or an entity that provides housing to the defendant is provided with all of the protections limiting the introduction of evidence that are provided to an employer pursuant to A.R.S. § 12-558.03, subsection b; and

4. This certificate of second chance is not a recommendation or sponsorship for or a promotion of the defendant when applying for an occupational license, employment or housing.

~~DENYING~~ the application to set aside conviction for the following reasons:

~~The defendant **has not met** all statutory requirements for the application.~~

~~The defendant was convicted of a criminal offense **not eligible** for a conviction to be set aside.~~

~~Other reasons:~~

DATED this _____ day of _____, _____.

Judicial Officer