

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-22-0028
RULE 26.11 AND RULE 36.1, RULES)
OF CRIMINAL PROCEDURE)
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) FILED 08/29/2022

**ORDER AMENDING RULE 26.11,
AND ADOPTING NEW RULE 36.1,
OF THE RULES OF CRIMINAL PROCEDURE
ON AN EMERGENCY BASIS**

On June 26, 2022, David K. Byers, on behalf of the Administrative Office of the Courts, filed a rule petition proposing to amend, on an emergency basis, Rule 26.11 of the Rules of Criminal Procedure and to adopt, also on an emergency basis, a new Rule 36.1 of the same rules. Upon consideration,

IT IS ORDERED that, pursuant to Rule 28(h)(2) of the Rules of the Supreme Court of Arizona, Rule 26.11 of the Rules of Criminal Procedure is amended, as modified, on an emergency basis in accordance with Attachment A to this order, effective January 1, 2023.

IT IS FURTHER ORDERED that, pursuant to Rule 28(h)(2) of the Rules of the Supreme Court of Arizona, a new Rule 36.1 of the Rules of Criminal Procedure is adopted on an emergency basis in accordance with Attachment B to this order, effective January 1, 2023.

IT IS FURTHER ORDERED that, consistent with this Court's

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TO:

Rule 28 Distribution
David K Byers

ATTACHMENT A¹

RULES OF CRIMINAL PROCEDURE

Rule 26.11. A Court's Duty After Pronouncing a Sentence

(a) **Disclosures.** After pronouncing judgment and sentence, the court must:

(1) inform the defendant:

(A)-(C) [No change]

(D) of the right to apply to have the judgment of conviction set aside, except as provided in A.R.S. § 13-905(K); ~~and~~

(E) of the right to the restoration of civil rights; and

(F) that the defendant may be eligible under A.R.S. § 13-911 to petition the court for an order that seals all case records of the defendant's arrest, conviction, and sentence that are related to the offense.

(2) [No change]

(b) [No change]

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

ATTACHMENT B

NEW RULE 36.1

RULES OF CRIMINAL PROCEDURE

Rule 36.1. Sealing Arrest, Conviction, and Sentencing Records

(a) Applicability. This rule governs petitions to seal records that are filed under A.R.S. § 13-911. “Case records” as used in this rule means all records that pertain to the person's arrest, conviction, and sentence for a particular offense and that may be sealed under A.R.S. § 13-911.

(b) Eligibility. A person may file a petition to seal all case records related to a criminal offense if the person has not previously had a petition denied in the past three years and the person was:

(1) except as provided in A.R.S. § 13-911(O), convicted of a criminal offense and has completed all the terms and conditions of probation or sentence, including the payment of all monetary obligations and restitution to all victims, and the required timeframes in A.R.S. § 13-911(E), (F), and (G) have passed;

(2) charged with a criminal offense and the charge was subsequently dismissed or resulted in a not guilty verdict at a trial; or

(3) arrested for a criminal offense and no charges were filed.

(c) Petition.

(1) *Contents of a Petition.*

(A) A petition filed under A.R.S. § 13-911 must include:

(i) the petitioner's name, address, date of birth, and the email address;

(ii) any name, if different from (i) used by petitioner at the time of the arrest, charge, or conviction;

(iii) the offense for which sealing is being requested;

(iv) if charges were filed, the court's case number;

(v) whether there are any outstanding fines, fees, restitution, or other court ordered financial obligations for the offense; and

(vi) whether the petitioner has completed the conditions of their probation or sentence.

(B) The petition should also state the following, if known:

(i) the date of arrest;

(ii) location of arrest;

(iii) the name of the arresting agency;

(iv) if charges were filed, the name of the prosecuting agency; and

(v) if the case was initially filed in a justice court but was transferred to the superior court, the name of the justice court and the justice court case number.

(2) *Petitioner's Signature; Attachments.* The petitioner must sign the petition with the following declaration, "I declare under penalty of perjury that the information I have provided in this petition and any attachments is true and correct to the best of my knowledge." The petitioner may attach supporting documents and affidavits to the petition.

(3) *Place of Filing; Filing Fee.*

(A) If the petitioner was convicted of an offense listed in the petition, the petition must be filed in the court in which the person was convicted.

(B) If an indictment, information, citation, or complaint was filed and all charges were dismissed, the person was found not guilty on all charges, or the person's conviction was vacated, the petition must be filed in the court in which the indictment, information, citation, or complaint was filed, except that if the case commenced in a justice court and was transferred to a superior court, the petition must be filed in the superior court.

(C) If the petitioner had an initial appearance but no charges were filed, the petition must be filed in the court in which the initial appearance was held.

(D) If the petitioner was arrested, did not have an initial appearance, and no charges were filed, the petition must be filed in the superior court in the county in which the arrest occurred.

(E) The clerk may not charge a fee for filing a petition.

(4) *Victim Notification.* The victim has a right to be present and heard at any proceeding in which the defendant has filed a petition to seal case records. If the victim has made a request for post-conviction notice, the prosecutor must provide the victim with notice of the defendant's petition and of the victim's rights under A.R.S. § 13-911.

(d) Processing of Petition.

(1) *Dismissal for Failure to Provide Sufficient Information.* No later than 10 days after the petition's filing, the court must make a determination as to whether the petition contains sufficient information to identify the records to be sealed. A petition that does not contain sufficient information to identify the records to be sealed must be dismissed. A dismissal under this rule may be made without a hearing. A dismissal for lack of providing sufficient information does not constitute a denial for purposes of (f)(4).

(2) *Providing the Petition to the Prosecutor and Victims.* If the petition is not dismissed, the court must send a copy of the petition and supporting documentation

submitted by the petitioner to the applicable prosecuting agency no later than 10 days after the petition's filing.

(3) *Response*. No later than 10 days after the petition's filing, the prosecutor or victim may file a response stating any objections to the petition. The person filing the response must send a copy of the response to the petitioner's attorney or the petitioner, if unrepresented.

(4) *Reply*. The petitioner may file a reply no later than 15 days after the response is filed.

(5) *Notification to the Department of Public Safety (DPS)*. If the petition is not dismissed, no later than 10 days after the petition's filing and on the approved form made available under (i), the court must notify DPS to request that DPS prepare and submit a report to the court that includes all of the petitioner's state and federal arrests, prosecutions, and convictions, and any other information that DPS believes will assist the court in making its determination.

(e) Hearing.

(1) *Basis for a Hearing*. The petitioner, prosecutor, or victim may request a hearing before the court has ruled on the petition. The court may sua sponte set a hearing before ruling on the petition.

(2) *Time for Hearing*. A hearing under this section must be held no later than 90 days after the petition's filing, unless the court finds good cause for an extension.

(3) *Notice to Victims*. The prosecuting agency must provide post-conviction victim notice of the hearing date and time and the right to be heard, if the victim requested post-conviction notification.

(f) Disposition.

(1) *Timeframe for Ruling on the Petition*. At least 30 days must elapse from the petition's filing before the court can grant or deny a petition, unless the court receives notice that the prosecutor and all victims who have made a request for post-conviction notice do not object to the petition.

(2) *Granting or Denying the Petition*. The court must grant the petition if it determines that granting the petition is in the best interests of the petitioner and the public's safety, except that if the petitioner is charged with an offense after filing a petition and the offense could result in a conviction that cannot be sealed or that could extend the time to file a petition to seal case records, the court may not grant or deny the petition until the court disposes of that charge. Unless the petitioner, prosecutor, or victim requests a hearing, the court may grant or deny a petition without a hearing.

(3) *Order Granting Petition*. If the court grants the petition, the court must, as to any applicable count, order sealed all case records related to the petitioner's arrest, conviction, and sentence.

(4) *Order Denying Petition and Refiling.* If the court denies the petition, the petitioner must wait at least 3 years from the date of denial before refiling the petition.

(g) Action by Clerk. If the court grants the petition, the clerk must seal all case records related to the petitioner's arrest, conviction, and sentence, and transmit the order to DPS and to the prosecutor. If the order is issued by a superior court, the clerk must also transmit the order to any limited jurisdiction court identified in the petition and to the probation department, if a term of probation was imposed.

(h) Appeal. An appeal from an order denying a petition may be taken only when the basis of the appeal is the defendant's eligibility to petition the court.

(i) Forms. The Administrative Director of the Administrative Office of the Courts is authorized to create and modify forms and instructions for use by the public and the courts to implement this rule. The director must make the forms available on the self-service page of the Arizona Judicial Branch website, azcourts.gov. Any substantial variation from these forms must first be approved by the Administrative Director. A petitioner may file a petition that varies from the approved form so long as it includes the information required by this rule and complies with Rule 1.6.