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**ARIZONA SUPREME COURT**

In the matter of:	)	
	)	
PETITION TO AMEND RULE 26.11	)	Supreme Court No. 22-0028
AND ADOPT RULE 36.1, RULES	)	
OF CRIMINAL PROCEDURE	)	Request to Amend Petition
	)	and Amended Petition
_____	)	

David K. Byers, Administrative Director, Administrative Office of the Courts, and Petitioner in this matter, hereby files this Request to Amend Petition and Amended Petition in the above-entitled matter to additionally propose adding verbiage regarding sealing criminal case records to Rule 41 of the Rules of Criminal Procedure, Form 23(a): Notice of Rights After Sentencing in the Superior Court. The proposed amendments are set forth in the Appendix and are in addition to the proposed rule amendments in Petitioner’s June 26, 2022 petition.

**I. Background**

SB 1294 creates A.R.S. § 13-911 and beginning January 1, 2023, allows a defendant to request that all case records related to a criminal offense be sealed when certain criteria have been met.

On June 26, 2022, Petitioner filed a petition requesting expedited consideration and emergency adoption of an amendment to Criminal Rule 26.11 and adoption of a new Criminal Rule 36.1 to implement SB 1294 by establishing procedures for handling these petitions and advising defendants at sentencing of their right to file a petition when certain criteria have been met.

On June 28, 2022, this Court granted Petitioner's request for expedited consideration and on August 29, 2022, adopted on an emergency basis Petitioner's proposed amendments. This Court will consider whether these amendments should be adopted on a permanent basis at its December 2022 Rules Agenda.

## **II. Purpose of Additional Proposed Amendments**

Among other things, A.R.S. § 13-911 includes a requirement that at the time of sentencing the court inform the defendant that they may be eligible to petition the court for an order that seals all case records pursuant to A.R.S. § 13-911. Although Petitioner's June 26, 2022 petition proposed an amendment to Rule 26.11(a)(1) that would add a new subsection (F) for this purpose, Petitioner files this amended petition to propose an amendment to Criminal Rule 41, Form 23(a) to aid with further implementing this notice requirement. Petitioner also proposes three technical amendments to Form 23(a), more particularly described below, for the Court's consideration.

## **III. Contents of Additional Proposed Amendments**

## **A. Proposed Verbiage to Implement SB 1294**

Criminal Form 23(a) is the “Notice of Rights After Sentencing in the Superior Court” form and contains information related to a defendant’s right to appeal, the right to post-conviction relief, and the right to apply to have a conviction set aside. Petitioner proposes adding the following verbiage to Form 23(a) to assist the superior court in providing notice to defendants of the right to petition the court for an order that seals all case records related to a criminal offense, in accordance with A.R.S. § 13-911(E):

### **RIGHT TO FILE PETITION TO HAVE CASE RECORDS SEALED.**

On fulfillment of the conditions of probation or sentence, including the payment of all monetary obligations and restitution to all victims, you may be eligible under A.R.S. § 13-911 for an order that seals all case records of your arrest, conviction, and sentence that are related to the criminal offense(s) in this case by filing in the court where you were convicted a petition to seal all case records under A.R.S. § 13-911. To be eligible, a petition to seal the case records cannot have been denied in the past three years, and the timeframes required by A.R.S. § 13-911 must have passed.

**Note:** A person who was sentenced as a dangerous offender pursuant to A.R.S. § 13-704 or convicted of any of the offenses listed in A.R.S. § 13-911(O) cannot petition to have criminal case records sealed under A.R.S. § 13-911.

## **B. Technical Amendments**

Petitioner also proposes three technical amendments to Form 23(a) in the following sections:

- Exercising Your Right to Appeal
  - Section 2, Petitioner proposes changing “Form 5” to “Forms 5(a) and (b)” to more precisely reference the Defendant’s Financial Statement and Request for Appointment of Counsel forms, and adding verbiage indicating that these forms are only necessary if the defendant is asking the court to appoint counsel due to indigence.
  - Section 3, Petitioner proposes changing “or” to “on.”
- Right to Apply to Have a Conviction Set Aside
  - Petitioner proposes changing the statutory reference in the “Note” from “A.R.S. § 13-907(K)” to “A.R.S. § 13-905(N)” to reflect the statutory renumbering resulting from House Bill (HB) 2080 during the 2019 First Regular Session of the 54<sup>th</sup> Legislature.

#### **IV. Request**

If the Court is inclined to grant Petitioner’s request to amend the petition in this matter, Petitioner respectfully requests that this Court extend the public comment period to October 17, 2022, with any reply due by October 21, 2022 and requests, pursuant to Rule 28 of the Rules of the Supreme Court, that this Court adopt the proposed amendments to Criminal Rule 41, Form 23(a) as set forth in the Appendix at its December 2022 Rules Agenda.

Respectfully submitted this 29<sup>th</sup> day of September, 2022.

By /s/David K. Byers  
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## APPENDIX

### Arizona Rules of Criminal Procedure (deletions shown with ~~strikethrough~~, new language is underlined)

#### Rule 41. Form 23(a). Notice of Rights After Sentencing in the Superior Court

SUPERIOR COURT OF ARIZONA IN \_\_\_\_\_ County

STATE OF ARIZONA, Plaintiff

[Case/Complaint No.]

-vs-

\_\_\_\_\_  
Defendant (first, middle, and last name)

**NOTICE OF RIGHTS AFTER  
SENTENCING IN THE SUPERIOR  
COURT  
(Non-Capital)**

#### RIGHT TO APPEAL.

You have a right to appeal from a final judgment of conviction or a verdict of guilty except insane, from an order denying a motion for new trial, from an order entered after judgment affecting your substantial rights, or from a sentence that you claim is illegal or excessive.

However, you do not have a right to direct appeal from your final judgment of conviction and sentence if you: (1) entered a plea of guilty or no contest; (2) admitted that you violated your conditions of probation or had an automatic probation violation based on a plea of guilty or no contest; or (3) failed to appear at sentencing, which resulted in sentencing occurring more than 90 days after the date of conviction. In these three situations, you may seek relief only by filing a notice and petition for post-conviction relief under Rule 33. (See the section below on post-conviction relief.)

#### EXERCISING YOUR RIGHT TO APPEAL.

1. Notice of Appeal. If you want to appeal from a judgment of conviction and imposition of sentence, you must file a Notice of Appeal (Form 24(a)) within 20 days after the court's oral pronouncement of your sentence in the courtroom. If you want to appeal from any other appealable judgment or order, you must file a Notice of Appeal (Form 24(a)) no later than 20 days after entry of the judgment or order. You will lose your right to appeal if you do not file a Notice of Appeal within the time required.

If you want to appeal, you should let your lawyer know that you want to appeal. You can file a Notice of Appeal before you leave the courtroom on the day you are sentenced. After that, you should contact your lawyer by phone, letter, or in person, and tell your lawyer that you want to appeal.

2. If You Want to Appeal but Do Not Have a Lawyer. If you do not have a lawyer, ask the clerk of the court, or staff at the jail or prison where you are incarcerated, for Form 24 (a), which is a Notice of Appeal. Also ask for Forms 5(a) and (b), which ~~is~~ are the Defendant's Financial Statement and Request for Appointment of Counsel, if you want to ask the court to appoint counsel because you are indigent.

Complete ~~both~~ all forms and immediately file them with, or send them to, the clerk of the superior court in the county where you were sentenced. These forms must arrive at the clerk's office within 20 days after the date you were sentenced.

3. Waiver of the Right to a Lawyer. You have a right to be represented by a lawyer ~~or~~ on your appeal, and you should have a lawyer handle your appeal. However, you may also represent yourself. If you choose to waive your right to appellate counsel, you must file a written waiver no later than 30 days after filing your notice of appeal. If you file your waiver before you file your notice of appeal, or at the same time, the waiver must be filed in the superior court. If you file your waiver after you filed your notice of appeal, you must file the waiver in the superior court and in the appellate court. If the superior court determines that your waiver of appellate counsel is knowing, intelligent, and voluntary, you will be allowed to represent yourself on appeal. But the court may appoint advisory counsel for you during any stage of the appeal.

### **RIGHT TO POST-CONVICTION RELIEF.**

Every defendant in the superior court has a right to request post-conviction relief under Rule 32 or 33.

1. What to File. To exercise your right to post-conviction relief, you first must file a Notice Requesting Post-Conviction Relief, Form 24(b).
2. When to File. If you do not file a Notice Requesting Post-Conviction Relief within the required time, you may lose the opportunity to have the court correct any errors that might have occurred in your case.
  - (a) *If you did not have an appeal.* If you did not file, or if you did not have the right to file, a Notice of Appeal, you must file a Notice of Post-Conviction Relief within 90 days after the oral pronouncement of sentence.
  - (b) *If you did have an appeal.* If you did appeal, you must file a Notice Requesting Post-Conviction Relief within 30 days after the appellate court issues an order and mandate affirming the judgment and sentence.
  - (c) *If you did not have a right to appeal but you had a first post-conviction proceeding and wish to raise a claim that post-conviction counsel was ineffective in a successive post-conviction proceeding.* If you did not have the right to appeal but you did seek post-conviction relief in a first proceeding and you claim your attorney in that proceeding was ineffective, you must file a Notice Requesting Post-Conviction Relief within 30 days after the trial court enters its final order in the first proceeding, or, if you sought appellate review of that order, no later than 30 days after the appellate court issues an order and mandate in that first proceeding.
3. How to File. You must obtain a copy of Form 24(b) (Notice Requesting Post-Conviction Relief) from your attorney, the clerk of the court, or staff at the jail or prison where you are incarcerated. Complete the notice and file it with, or send it to, the clerk of the superior court of the county where you were sentenced. The notice must arrive at the clerk's office within the time specified in paragraph 2.
4. Requesting a Lawyer. If you want a lawyer to represent you in your post-conviction proceeding and you cannot afford to hire a lawyer, you must sign the declaration of indigency contained in the Notice Requesting Post-Conviction Relief and ask the court to appoint a lawyer to represent you.

If you want a full copy of the rules governing appeals and post-conviction relief, the clerk of the court in the county where you were convicted will send you one upon request.

### **RIGHT TO APPLY TO HAVE A CONVICTION SET ASIDE.**

On fulfillment of the conditions of probation or sentence, and discharge by the court, you may apply to the court where you were sentenced to have the judgment of guilt set aside. Your attorney or probation officer can apply on your behalf. If you were convicted of multiple offenses, the court must act on each individual case and each individual count. If you have more than one case number, you must file a separate application for each case number. The court will not charge a fee for filing an application to set aside a conviction. The Application to Set Aside Conviction (Form 31(a)) is available online from the Arizona Judicial Branch Self-Service Center at <https://www.azcourts.gov/> and from most superior court web sites. Complete the form and file it with, or send it to, the clerk of the superior court of the county where you were sentenced.

**Note:** A person who was convicted of any of the offenses listed in A.R.S. § ~~13-907(K)~~ 13-905(N) cannot apply to have the conviction set aside.

**RIGHT TO FILE PETITION TO HAVE CASE RECORDS SEALED.**

On fulfillment of the conditions of probation or sentence, including the payment of all monetary obligations and restitution to all victims, you may be eligible under A.R.S. § 13-911 for an order that seals all case records of your arrest, conviction, and sentence that are related to the criminal offense(s) in this case by filing in the court where you were convicted a petition to seal all case records under A.R.S. § 13-911. To be eligible, a petition to seal the case records cannot have been denied in the past three years, and the timeframes required by A.R.S. § 13-911 must have passed.

**Note:** A person who was sentenced as a dangerous offender pursuant to A.R.S. § 13-704 or convicted of any of the offenses listed in A.R.S. § 13-911(O) cannot petition to have criminal case records sealed under A.R.S. § 13-911.

**RECEIPT BY DEFENDANT.**

I have received a copy of this notice.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant's Signature