

ordered that the comment period be extended to October 17, 2022.

Having considered the amended petition, and having received no comments,

IT IS ORDERED that the amendments to Rule 26.11 of the Rules of Criminal Procedure, which the Court adopted on an emergency basis on August 29, 2022, are hereby adopted permanently, as modified, in accordance with Attachment A to this order, effective January 1, 2023. Attachment A is the same as Attachment A to this Court's August 29, 2022 order except that a cross-reference in Rule 26.11(a)(1)(D) was modified.

IT IS FURTHER ORDERED that new Rule 36.1 of the Rules of Criminal Procedure, which the Court adopted on an emergency basis on August 29, 2022, is hereby adopted permanently in accordance with Attachment B to this order, effective January 1, 2023. Attachment B is the same as Attachment B to this Court's August 29, 2022 order.

IT IS FURTHER ORDERED that Rule 41, Form 23(a) of the Rules of Criminal Procedure is amended in accordance with Attachment C to this order, effective January 1, 2023.

DATED this 8th day of December, 2022.

/s/
ROBERT BRUTINEL
Chief Justice

Arizona Supreme Court No. R-22-0028
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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(~~KN~~);~~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 30 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 date of 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.

ATTACHMENT C²

RULES OF CRIMINAL PROCEDURE

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

² Additions to the text of a form are shown by double underscoring and deletions are shown by ~~strike-through~~.

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