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ARIZONA SUPREME COURT

In the matter of:)
)
PETITION TO AMEND RULES 25, 26.11,) Supreme Court No. 23-_____
27.4, 29.7, AND 41 OF THE) (expedited consideration
RULES OF CRIMINAL PROCEDURE) and emergency adoption
) requested)
)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend the rules specified above as proposed in the Appendix. The proposed amendments are prompted by the enactment of Senate Bill (SB) 1036, SB 1582, and House Bill (HB) 2055 from the 2023 First Regular Session of the Fifty-sixth Legislature, and SB 1839 from the 2021 First Regular Session of the Fifty-fifth Legislature, as more particularly described below.

SB 1036 and SB 1582 are expected to become effective in early Fall 2023; HB 2055 becomes effective on January 1, 2024; and SB 1839 became effective on January 1, 2023. Accordingly, Petitioner seeks expedited consideration of this petition and emergency adoption of the proposed amendments to Criminal Rules

26.11, 29.7, and 41 with an effective date that coincides with the general effective date of legislation from the 2023 First Regular Session of the Fifty-sixth Legislature.

Since the proposed amendments to Criminal Rule 27.4 are based on legislation that becomes effective on January 1, 2024, Petitioner seeks adoption of the proposed amendments to Criminal Rule 27.4 with an effective date of January 1, 2024.

Lastly, since the proposed amendments to Criminal Rule 25 are based on legislation that became effective on January 1, 2023, Petitioner seeks emergency adoption of the proposed amendments to Criminal Rule 25 with an immediate effective date.

I. Purpose of the Proposed Rule Amendments.

A. Conviction Set Asides

1. SB 1036, Setting Aside Conviction; Certificate Eligibility (Laws 2023, Ch. 3)

SB 1036 clarifies A.R.S. § 13-905 related to a person's eligibility for a certificate of second chance upon the set aside of a judgment of guilt. Specifically, a person is not eligible for a certificate of second chance if the person has previously received a certificate of second chance on the set aside of a felony conviction. The proposed rule amendments would add clarifying language to Criminal Rule 29.7 that tracks A.R.S. § 13-905(L). Cross-reference updates to Criminal Rule 26.11(a)(1)(D)

and Criminal Rule 41, Form 23(a) are also necessary to reflect the renumbering of A.R.S. § 13-905(N) to § 13-905(P).

Petitioner also proposes amending Criminal Rule 41, Form 31(a), Application to Set Aside Conviction, to include two questions under Section III, Prior Set Aside(s), to assist the court in determining whether the defendant has previously had a felony conviction set aside and if so, whether the defendant received a certificate of second chance for that set aside.

2. SB 1582, Lifetime Injunction; Petition; Procedures (Laws 2023, Ch. 70)

A.R.S. § 13-905(D) sets forth the exceptions to the penalties and disabilities from which a person is released when a judgment of guilt is set aside. SB 1582 adds as an exception a lifetime injunction that is issued pursuant to A.R.S. § 13-719. Petitioner therefore proposes adding this exception to Rule 41, Form 31(b), Order Regarding Application to Set Aside Conviction and Restore Firearm Rights, to the portion of the order that grants the application to set aside a conviction. Petitioner also proposes a non-substantive technical change to the certificate of second chance portion of Form 31(b), to change “A.R.S. § 12-558.03, subsection b” to “A.R.S. § 12-558.03(B).”

B. SB 1839, Guilty Except Insane; Court Jurisdiction (Laws 2021, Ch. 390)

SB 1839 vested the superior court with the powers and duties of the Psychiatric Security Review Board (“Board”) and with jurisdiction over persons previously supervised by the Board. SB 1839 originally had a delayed effective date of July 1, 2023. However, this date was moved to January 1, 2023 during the 2022 Second Regular Session of the Fifty-fifth Legislature through HB 2863, Sections 8 through 12. The proposed rule amendment would update a cross-reference in Criminal Rule 25 from “A.R.S. § 13-3994” to “A.R.S. § 13-3992.”

C. HB 2055, Probation Work Time Credits (Laws 2023, Ch. 53)

Under A.R.S. § 13-924, courts are permitted to adjust the period of a probationer’s supervised probation for earned time credit. HB 2055 adds a new subsection (C) to A.R.S. § 13-924 to authorize courts to also adjust the period of a probationer’s supervised probation for work time credit. Criminal Rule 27.4(b) reflects the provisions of A.R.S. § 13-924 allowing a court to adjust the duration of supervised probation for earned time credit. Petitioner proposes adding verbiage to Criminal Rule 27.4(b) to include work time credit as provided by HB 2055.

II. Preliminary Comments.

This petition has not been sent to the court community for pre-filing comments because of its technical nature and due to the short period of time since the enactment of the new statutory provisions.

III. Request for Expedited Consideration and Emergency Adoption.

SB 1036 and SB 1582 are expected to become effective in early Fall 2023; HB 2055 becomes effective on January 1, 2024; and SB 1839 became effective on January 1, 2023.

Therefore, as permitted by Supreme Court Rule 28(h), Petitioner respectfully requests that this Court expedite its consideration of this petition for inclusion on the August 2023 Rules Agenda, consider adoption of the proposed amendments as set forth in the Appendix on an emergency basis at that Agenda with effective dates that coincide with the corresponding legislation effective dates, open the petition for comment, and consider adopting the proposed amendments on a permanent basis at this Court's December 2023 Rules Agenda.

Respectfully submitted this 29th day of June, 2023.

By /s/ David K. Byers
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APPENDIX

Arizona Rules of Criminal Procedure

(deletions shown with ~~strikethrough~~, new language is underlined)

RULE 25. PROCEDURE AFTER A VERDICT OR FINDING OF GUILTY EXCEPT INSANE

After a verdict or finding under A.R.S. § 13-502 of guilty except insane, the court must commit the defendant to a secure mental health facility under the procedures provided in A.R.S. § ~~13-3994~~ 13-3992.

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) through (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(~~N~~P);

(E) and (F) [No change]

(2) [No change]

(b) and (c) [No change]

Rule 27.4. Early Termination of Probation.

(a) [No change]

(b) Earned Time Credit Probation Termination. The court may reduce the term or duration of supervised probation for earned time credit or work time credit as provided by law.

(c) [No change]

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 on the set aside of a felony conviction and

(1) through (3) [No change]

(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) unless the defendant has previously received a certificate of second chance on the set aside of a felony conviction. Rule 29.2 applies to such an application.

RULE 41. FORMS

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-

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

Defendant (first, middle, and last name)

RIGHT TO APPEAL.

[No change]

EXERCISING YOUR RIGHT TO APPEAL.

[No change]

RIGHT TO POST-CONVICTION RELIEF.

[No change]

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. § 13-905(~~N~~P) cannot apply to have the conviction set aside.

RIGHT TO FILE PETITION TO HAVE CASE RECORDS SEALED.

[No change]

RECEIPT BY DEFENDANT.

[No change]

Date

Defendant's Signature

Form 31(a). Application to Set Aside Conviction

_____ **COURT OF ARIZONA**
IN _____ **COUNTY**

STATE OF ARIZONA -vs- _____ Defendant (FIRST, MI, LAST) Date of Birth: _____ Applicant is: <input type="checkbox"/> Defendant <input type="checkbox"/> Attorney for Defendant <input type="checkbox"/> Probation Officer	Case Number: _____ <p style="text-align: center;">APPLICATION TO SET ASIDE CONVICTION (A.R.S. § 13-905)</p> <p>Note: Your application may entitle you to restoration of the right to possess and carry a firearm pursuant to A.R.S. § 13-905(J)</p>
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SECTION I. CONVICTION(S)

A Judgment of Guilt was entered in the _____ Court against the defendant

on the _____ day of _____, _____, on the conviction of:

1. Count I: _____
2. Count II: _____
3. Count III: _____
4. Count IV: _____

Additional counts continue on a separate page.

SECTION II. SENTENCE COMPLIANCE

1. I have complied with all required terms of the **sentence** (including all probation, employment, classes, community restitution, victim restitution or other monetary obligations, drug/alcohol testing, or other requirements). **Yes** **No**. If no, please explain:

2. I received a certificate of absolute discharge from the Arizona Department of Corrections. **Yes** **No**.

3. Victim restitution **has** **has not** been paid in full or **was not ordered**.

If victim restitution has not been paid in full, please explain:

-
4. All other court-ordered monetary obligations [] **have** [] **have not** been paid in full or [] **were not ordered.**

If all other monetary obligations have not been paid in full, please explain:

In some circumstances, you may be eligible to apply to the court to modify the amount owed or convert monies owed to community restitution.

SECTION III. PRIOR SET ASIDE(S)

1. Have you previously applied to set aside any conviction? [] **Yes** [] **No.** If so, what was the date of your last application? _____
2. Have you previously been granted a set aside? [] **Yes** [] **No.** If so, was the set aside on a felony conviction? [] **Yes** [] **No.**
3. If you have previously been granted a set aside on a felony conviction, did you receive a certificate of second chance? [] **Yes** [] **No** [] **N/A.**
4. Have you previously been denied a set aside? [] **Yes** [] **No.**

SECTION IV. PENDING CASES

1. Are there any open criminal cases against you? [] **Yes** [] **No.** If yes, please explain:

SECTION V. OTHER INFORMATION FOR THE COURT

1. Is there anything you would like the court to take into consideration?

2. [] Attached is other pertinent documentation. List attached documents:

3. The defendant, prosecutor, or the victim may request a hearing, but the court is not required to set a hearing. Do you request a hearing? [] **Yes** [] **No.**

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: _____ <p style="text-align: center;">ORDER REGARDING APPLICATION TO SET ASIDE CONVICTION AND RESTORATION OF FIREARM RIGHTS</p> 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 setting aside the conviction; 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 the statutory requirements for 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.

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.
 - c. A lifetime injunction issued pursuant to A.R.S. § 13-719.
- [] The applicant's right to possess a firearm is also **restored**.
- OR**
- [] The applicant's right to possess a 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-M~~):
- 1. Unless specifically excluded by A.R.S. § 13-905(~~K-M~~), 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(B), ~~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.

DATED this _____ day of _____, _____.

Judicial Officer