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**ARIZONA SUPREME COURT**

In the matter of: )  
)  
PETITION TO AMEND SUPREME ) Supreme Court No. 24-\_\_\_\_\_  
COURT RULE 123(e)(10), CIVIL RULE ) (expedited consideration  
47(b), AND CRIMINAL RULES 18.3(b), ) and emergency adoption  
26.11(a), 26.13, 29.1(b), 31.5(a), 35.1, ) requested)  
36.1(b) AND (f), AND 41, FORMS 6, 7, )  
21, 23(a), 31(a), AND 31(b) )  
)  
\_\_\_\_\_)

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 \(SB\) 1639](#), [SB 1673](#), [House Bill \(HB\) 2623](#), and [HB 2665](#) from the Second Regular Session of the Fifty-sixth Legislature, and this Court’s opinion in [State v. Perez-Gutierrez](#), 548 P.3d 1102, 1106 (Ariz. 2024) as more particularly described below. Petitioner also proposes several technical amendments to correct statutory and rule cross-references.

The legislation listed becomes effective on September 14, 2024. Further, the procedural requirements adopted by this Court in *State v. Perez-Gutierrez* are currently in effect. Lastly, the technical amendments Petitioner proposes reflect statutory and rule subsections that are currently in place. Therefore, Petitioner seeks expedited consideration of this petition at this Court's August 2024 Rules Agenda and emergency adoption of the proposed amendments as set forth in the Appendix.

Petitioner further requests that if this Court grants Petitioner's expedited consideration request and subsequently adopts the proposed amendments on an emergency basis, that the proposed amendments to Criminal Rules 26.11(a), 26.13, 31.5(a), 35.1, and 41, Forms 7, 31(a), and 31(b) become effective immediately, and the proposed amendments to Supreme Court Rule 123(e)(10), Civil Rule 47(b), and Criminal Rules 18.3(b), 29.1(b), 36.1(b) and (f), and 41, Forms 6, 21, and 23(a) become effective on the 2024 legislation general effective date of September 14, 2024.

## **I. Purpose of the Proposed Rule Amendments.**

### **A. SB 1639, Subsequent Felony; Sealing Case Records (Laws 2024, Ch. 244)**

SB 1639 makes multiple changes to A.R.S. § 13-911 related to the sealing of criminal case records. Specifically pertinent to Petitioner's proposed amendments to Criminal Rule 36.1 as set forth in the Appendix, SB 1639:

- Extends the time in A.R.S. § 13-911(D) from 30 days to 60 days pertaining to the time the court must wait before granting or denying a petition. Petitioner therefore proposes a corresponding change to Criminal Rule 36.1(f)(1) to change “30” to “60.”
- Amends A.R.S. § 13-911(O), which provides the offenses that are ineligible for sealing. Where A.R.S. § 13-911(O) previously made *convictions* of certain offenses ineligible for sealing and persons *sentenced* as a dangerous offender ineligible, it now makes the offenses generally, regardless of whether the person was convicted, ineligible for sealing. Petitioner therefore proposes an amendment to Criminal Rule 36.1(b) to add in the first sentence “an eligible” to “criminal offense,” which applies to subsections (1) through (3) that follow. Petitioner therefore proposes removing “except as provided by A.R.S. § 13-911(O) from subsection (1), since this exception would be addressed by the reference in (b) to “an eligible criminal offense.” For this same reason, Petitioner also proposes amending Criminal Rule 41, Form 23(a) (“notice of rights after sentencing in the superior court (non-capital)”), to amend the second paragraph of the “Right to File Petition to Have Case Records Sealed” as follows (with additions underlined and deletions stricken):

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

### **Paragraph 1: [No change]**

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

- Amends A.R.S. § 13-911(G) such that it no longer addresses the required waiting period for filing a petition. Petitioner therefore proposes amending Criminal Rule 36.1(b) to remove reference to A.R.S. § 13-911(G).
- Adds to A.R.S. § 13-911(N) that if the petitioner has a pending charge at the time of filing the petition that 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 cannot grant or deny the petition until the court disposes of that charge. Petitioner therefore proposes an analogous change to Criminal Rule 36.1(f)(2).

### **B. SB 1673, Master Jury List; Juror Information (Laws 2024, Ch. 175)**

SB 1673 amends A.R.S. §§ 21-101 and -301 to add dates of birth, telephone numbers, and email addresses to the information included for the persons on the master jury list. Civil Rule 47(b)(2), Criminal Rule 18.3(b), and Supreme Court Rule 123(e)(10) provide for keeping certain juror information confidential, which already

includes jurors' telephone numbers. Therefore, Petitioner proposes amending Supreme Court Rule 123(e)(10), Civil Rule 47(b)(2), and Criminal Rule 18.3(b) to add juror dates of birth and email addresses to the information required to be kept confidential by the court.

**C. HB 2623, Vacate Conviction; Sex Trafficking; Victims (Laws 2024, Ch. 195) & HB 2665, Child Sex Trafficking; Facilitating Prostitution (Laws 2024, Ch. 255)**

HB 2623 and HB 2665 amend A.R.S. § 13-909(A) to remove the requirement that a conviction of A.R.S. § 13-3214, or a city or town ordinance that has the same or substantially similar elements, is eligible to be vacated by a sex trafficking victim only if the offense was committed before July 24, 2014. Petitioner therefore proposes amending Criminal Rule 29.1(b) and Rule 41, Form 21 ("application to vacate conviction under A.R.S. § 13-909") to strike the reference to July 24, 2014.

HB 2665 also adds A.R.S. § 13-3212 to A.R.S. § 13-3967(E) related to release conditions and charges that require electronic monitoring where available. Petitioner therefore proposes adding "or 13-3212" to release condition number 17 related to electronic monitoring in Rule 41, Form 6 ("release order").

**D. Criminal Rule 26.13 and *State v. Perez-Gutierrez***

A.R.S. § 13-711(A) provides that when multiple sentences of imprisonment are imposed on a person at the same time, the sentences may run consecutively or concurrently, but the court must state on the record the reason for its determination.

Criminal Rule 26.13 also provides requirements related to imposing concurrent and consecutive sentences such that the sentences run consecutively unless the judge expressly directs otherwise. The rule does not require, however, that the court state on the record the reason for its determination. In its *State v. Perez-Gutierrez* opinion filed on May 31, 2024, this Court prospectively adopted the procedural requirements of A.R.S. § 13-711(A) such that when a judge is imposing multiple sentences of imprisonment on a person at the same time, it must state on the record the reason for his or her determination. Petitioner therefore proposes formally adding this requirement to Criminal Rule 26.13 as set forth in the Appendix.

#### **E. Technical Amendments**

Petitioner proposes the following technical amendments:

- Criminal Rules 26.11(a)(2) and 31.5(a)(3) to change the reference to Rule 6.1(b) to Rule 6.1(g) relating to the definition of indigent.
- The second paragraph of the comment to Criminal Rule 35.1 to change “33.1” to “35.1” to reflect the renumbering of Criminal Rule 33 to 35 in Rule Petition [R-19-0012](#).
- Rule 41, Form 7 (“appearance bond”) to change “Judicial Officer, Deputy Clerk or Notary Public” in the signature block to “Notarial Officer” as provided by the Revised Uniform Law on Notarial Acts (Laws 2021, Ch. 66), which allows a “notarial officer” to perform

notarial acts, including notarizing documents. Under A.R.S. § 41-251(7), a notarial officer is a “notary public or other individual who is authorized to perform a notarial act.” Under A.R.S. § 41-258(A), a notary public, a judge, clerk or deputy clerk of a court of record, an individual who is licensed to practice law in this state, and any other individual who is authorized to perform the specific act under Arizona law is authorized to perform a notarial act. This proposed change is consistent with similar rule changes made in Rule Petition [R-22-0033](#).

- Rule 41, Form 31(a) (“application to set aside a conviction”) to change “13-905(J)” in the caption to accurately reflect “13-905(O).”
- Rule 41, Form 31(b) (“order regarding application to set aside conviction and restoration of firearm rights”) to remove subsection “M” from number 1 of the certificate of second chance, since the exclusions contemplated under this provision are the exclusions provided by A.R.S. § 13-905 generally, and not those listed in A.R.S. § 13-905(M) specifically.

## **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.**

The legislation identified in this petition is expected to become effective on September 14, 2024. 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 2024 Rules Agenda; consider adoption of the proposed amendments as set forth in the Appendix on an emergency basis at that Agenda with an immediate effective date for Criminal Rules 26.11(a), 26.13, 31.5(a), 35.1, and 41, Forms 7, 31(a), and 31(b), and a September 14, 2024 effective date for the amendments to Supreme Court Rule 123(e)(10), Civil Rule 47(b), and Criminal Rules 18.3(b), 29.1(b), 36.1(b) and (f), and 41, Forms 6, 21, and 23(a); open the petition for comment; and consider adopting the proposed amendments on a permanent basis at this Court's December 2024 Rules Agenda.

Respectfully submitted this 3<sup>rd</sup> day of July, 2024.

By /s/ David K. Byers  
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## APPENDIX

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

### Rules of the Supreme Court of Arizona

#### Rule 123. Access to Judicial Records of the State of Arizona

(a) through (d) [No change]

(e) **Access to Administrative Records.** All administrative records are open to the public except as provided herein:

(1) through (9) [No change]

(10) *Juror Records.* The dates of birth, email addresses, home and work telephone numbers and addresses of jurors, and all other information obtained by special screening questionnaires or in voir dire proceedings that personally identifies jurors summoned for service, except the names of jurors on the master jury list, are confidential, unless disclosed in open court or otherwise opened by order of the court.

(11) through (14) [No change]

(f) through (j) [No change]

### Arizona Rules of Civil Procedure

#### Rule 47. Jury Selection; Juror Information; Voir Dire; Challenges

(a) [No change]

(b) **Juror Information.**

(1) [No change]

(2) *Confidentiality of Eligibility and Biographical Information.* The clerk must obtain and maintain juror information in a manner and form approved by the Supreme Court as set forth in statute, rule, Administrative Code, or Administrative Order, and this information may only be used for the purpose of jury selection. The clerk must keep all jurors' dates of birth, email addresses, home and business telephone numbers and addresses confidential and may not disclose them unless by order of the court for good cause shown.

(3) [No change]

(c) through (e) [No change]

### Arizona Rules of Criminal Procedure

#### Rule 18.3. Jurors' Information

(a) [No change]

**(b) Confidentiality of Eligibility and Biographical Information.** The court must obtain and maintain juror information in a manner and form approved by the Supreme Court as set forth in statute, rule, Administrative Code or Administrative order, and this information may be used only for the purpose of jury selection. The court must keep all jurors' dates of birth, email addresses, home and business telephone numbers and addresses confidential, and may not disclose them unless by order of the court for good cause shown.

**(c) [No change]**

### **Rule 26.11. A Court's Duty After Pronouncing Sentence**

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

(1) [No change]

(2) advise that:

(A) if the defendant is indigent, as defined in Rule 6.1(~~b~~-g), the court will appoint counsel to represent the defendant on appeal;

(B) and (C) [No change]

**(b) and (c) [No change]**

### **Rule 26.13. Consecutive Sentences**

If the court imposes separate sentences of imprisonment on a defendant for two or more offenses, the sentences run consecutively unless the judge expressly directs otherwise. Regardless of whether the sentences run consecutively or concurrently, the judge must state on the record the reason for his or her determination. This rule applies even if the offenses are not charged in the same indictment or information. There is no presumption favoring consecutive sentences rather than concurrent sentences.

### **Rule 29.1. Grounds; Notice**

**(a) [No change]**

**(b) Sex Trafficking Victims.** Under A.R.S. § 13-909, a sex trafficking victim may apply in writing to the court to vacate the victim's conviction under A.R.S. § 13-3214, or a city or town ordinance that has the same or substantially similar elements, ~~if the offense was committed before July 24, 2014.~~

### **Rule 31.5. Appointment of Counsel on Appeal; Waiver of the Right to Appellate Counsel**

**(a) Determination that the Defendant Is Indigent.**

(1) and (2) [No change]

(3) *Definition of "Indigent."* The term "indigent" is defined in Rule 6.1(~~b~~-g).

**(b) through (f) [No change]**

## **Rule 35.1. Definition**

**(a) and (b) [No change in text]**

### **COMMENT**

This rule is applicable to all types of contempt except the comparatively narrow class of direct criminal contempts covered by A.R.S. §§ 12-861 to -863 which must be prosecuted according to the terms of those statutes.

Rule ~~33.1~~35.1 defines criminal contempt. The definition derives from A.R.S. § 12-861 and the Arizona Supreme Court's statements in *Ong Hing v. Thurston*, 101 Ariz. 92, 96, 416 P.2d 416, 420 (1966). This definition, and the succeeding sections, apply only to criminal contempt. Civil contempt, which is possible in a criminal case (such as in the case of a witness who refuses to submit to a deposition) is not treated in this rule. The general distinction between civil and criminal contempt is the purpose for which the punishment is imposed. A person is imprisoned for civil contempt to force compliance with a lawful order of the court; that person holds the keys to the jail and can gain release at any time by complying with the order. *See Shillitani v. United States*, 384 U.S. 364, 370-71 (1966). A criminal contempt citation, on the other hand, is intended to vindicate the dignity of the court. It is a criminal offense for which a specific punishment is meted out, over which the defendant has no control. *See United States v. Barnett*, 376 U.S. 681, 692-94 (1964).

## **Rule 36.1. Sealing Arrest, Conviction, and Sentencing Records**

**(a) [No change]**

**(b) Eligibility.** A person may file a petition to seal all case records related to an eligible 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~~ the 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), and (F), ~~and (G)~~ have passed;
- (2) charged with a ~~criminal~~ the offense and the charge was subsequently dismissed or resulted in a not guilty verdict at a trial; or
- (3) arrested for a ~~criminal~~ the offense and no charges were filed.

**(c) through (e) [No change]**

**(f) Disposition.**

- (1) *Timeframe for Ruling on the Petition.* At least ~~30~~60 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 has another criminal charge pending or is charged with an offense after filing a petition and the ~~offense charge~~ 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) and (4) [No change]

**(g) through (i) [No change]**

# RULE 41. FORMS

## Form 6. Release Order

COURT										County, Arizona			
STATE OF ARIZONA Plaintiff										<b>RELEASE ORDER</b>			
-vs-													
Defendant (FIRST, MI, LAST)			Booking Number				Date of Birth						
LINE #	COMPLAINT NO.	VIOLATION CODE	NF	ORR	PSR	3P	BOND	BA	UB	DB	SB	CB	NB
1							\$						
2							\$						
3							\$						
4							\$						
5							\$						

(NF=Charge not filed; ORR=Own recognizance release; PSR=Pretrial supervision release; 3P=Third party custody; Bond=Amount of bond; BA=Bond applies; UB=Unsecured bond; DB=Deposit bond; SB=Secured bond; CB=Cash bond; NB=Non-bailable)

If you are released from jail, you must follow all release conditions and appear at court as indicated below:

### MANDATORY AND STANDARD CONDITIONS OF YOUR RELEASE:

1.through 16. [No change]

17. Electronic monitoring, if available, (mandatory if charged with a felony offense under Chapters 14 or 35.1 of Title 13 or 13-3212)

18. [No change]

### ADDITIONAL CONDITIONS FOR YOUR PRETRIAL SUPERVISION RELEASE (PSR):

[No change]

### FINANCIAL CONDITIONS OF RELEASE:

[No change]

### IF YOU VIOLATE THIS ORDER:

[No change]

### ACKNOWLEDGEMENT:

[No change]

### THIRD PARTY OBLIGATIONS

[No change]

### WARNING

[No change]

**Form 7. Appearance Bond**

COURT

County, Arizona

STATE OF ARIZONA Plaintiff -vs-  Defendant (FIRST, MI, LAST)	  Booking Number	  Date of Birth	<b>APPEARANCE BOND</b>

**WARNING TO DEFENDANT AND DEFENDANT’S SURETY (if any)**

[No change]

<b>TYPE OF APPEARANCE BOND ORDERED:</b>  [No change]
--

**OATH OR AFFIRMATION**

I declare under penalty of perjury that the information I have provided on this form and in any attachments is true and correct.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judicial Officer, Deputy Clerk or Notary Public  
Notarial Officer

\_\_\_\_\_  
My Commission Expires/Seal

**Approved:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Surety or Authorized Agent

**Form 21. Application to Vacate Conviction under A.R.S. § 13-909**

\_\_\_\_\_ **COURT OF ARIZONA**  
**IN** \_\_\_\_\_ **COUNTY**

<b>APPLICANT</b>  (Name/Address/Phone): _____	<b>CASE NO.</b>  _____  <b>APPLICATION</b>	<b>APPLICATION TO VACATE                  CONVICTION FOR A PRIOR                  OFFENSE UNDER                  A.R.S. § 13-909                  AND SUPPORTING                  DECLARATION</b>
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APPLICANT asks the court to vacate the conviction for the crime of Prostitution, under A.R.S. § 13-3214 or a city or town ordinance that has the same or substantially similar elements of section 13-3214, committed prior to July 24, 2014. The conviction occurred on \_\_\_\_\_ in this court. This relief is sought under A.R.S. § 13-909. The law provides that any person so convicted may apply to the sentencing court to vacate the conviction. The applicant is entitled to relief if the applicant can establish by clear and convincing evidence that the applicant's participation in the offense was the direct result of having been a victim of sex trafficking pursuant to A.R.S. § 13-1307.

Explain how you were a victim of sex trafficking and, as a direct result, were convicted of Prostitution:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If additional information is required, you may attach additional pages on lined paper.

I state under penalty of perjury that the information I have provided on this form is true and correct.

Date: \_\_\_\_\_ Signature \_\_\_\_\_  
 Applicant

**CERTIFICATE OF MAILING**

I CERTIFY that I delivered or mailed a copy of this application to the prosecutor's office that prosecuted the case at the following  
 Address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ Signature \_\_\_\_\_  
 Applicant

**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.**

[No change]

**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 Case records for any of the offenses listed in A.R.S. § 13-911(O) cannot petition to have criminal case records are not eligible to be sealed under A.R.S. § 13-911.~~

**RECEIPT BY DEFENDANT.**

[No change]

\_\_\_\_\_  
Date

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

**Form 31(a). Application to Set Aside Conviction**

\_\_\_\_\_ **COURT OF ARIZONA**  
**IN** \_\_\_\_\_ **COUNTY**

<p>STATE OF ARIZONA</p> <p>-vs-</p> <hr/> <p>Defendant (FIRST, MI, LAST)</p> <p>Date of Birth: _____</p> <p>Applicant is: [ ] Defendant [ ] Attorney for Defendant [ ] Probation Officer</p>	<p>Case Number: _____</p> <p><b>APPLICATION TO SET ASIDE CONVICTION</b> (A.R.S. § 13-905)</p> <p><b>Note:</b> Your application may entitle you to restoration of the right to possess and carry a firearm pursuant to A.R.S. § 13-905(<del>J</del><u>Q</u>)</p>
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**[No change to remainder of form]**

**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;"><b>ORDER REGARDING                  APPLICATION TO SET ASIDE                  CONVICTION AND RESTORATION                  OF FIREARM RIGHTS</b></p> A.R.S. §§ 13-905 & 13-910
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\* \* \*

**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(M):

1. Unless specifically excluded by A.R.S. § 13-905(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. through 4. [No change]

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
 Judicial Officer