

David K. Byers
Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, AZ 85007-3327
Phone: (602) 452-3301
Projects2@courts.az.gov

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the matter of:	)	
	)	Supreme Court No. 26-_____
PETITION TO AMEND RULE 41,	)	
FORMS 31(a) AND 31(b) OF THE RULES)		PETITION
OF CRIMINAL PROCEDURE	)	
	)	
_____	)	

Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona, David K. Byers, Administrative Director, Administrative Office of the Courts (AOC), respectfully petitions this Court to amend Rule 41, Forms 31(a) and 31(b) of the Rules of Criminal Procedure as shown in Appendix A.

I. Introduction and Background

A. Setting Aside a Conviction

Under A.R.S. § 13-904, an individual who is convicted of a felony offense has certain civil rights suspended, including the right to possess a firearm. The right to possess a firearm may be restored in various ways, including by operation of law

under A.R.S. § 13-905 when an application to set aside the conviction that forms the basis of the suspension is granted.

Specifically, A.R.S. § 13-905 allows a person convicted of an eligible offense to apply to the court to have the judgment of guilt set aside on fulfillment of the conditions of probation or sentence and discharge by the court. A.R.S. § 13-905(O) provides that a conviction set aside under A.R.S. § 13-905 restores the person's right to possess a firearm unless the conviction was for a serious offense as defined in A.R.S. § 13-706.

Granting or denying an application to set aside a conviction ("Application") is discretionary with the court, consistent with Criminal Rule 29 and A.R.S. § 13-905. But if the court grants the Application, whether the defendant's firearm rights are restored is not discretionary—restoration either happens automatically by operation of law because the conviction was for a non-serious offense, or firearm rights are not automatically restored because the conviction was for a serious offense.

B. History of A.R.S. § 13-905

Until 2015, the granting of an application to set aside a conviction did not automatically restore the person's right to possess a firearm. "A conviction set aside under [A.R.S. § 13-907(C)] [renumbered as 13-905 by Laws 2019, Ch. 149, §4] may

continue to serve as the basis for restricting a defendant's right to bear firearms."

State v. Hall, 322 P.3d 191, Ariz.App. Div. 2 2014

In 2015, the Arizona Legislature amended A.R.S. § 13-907 to provide automatic restoration of a person's firearm rights if his or her judgment of guilt for a non-serious felony offense is set aside. Specifically, SB 1189 added a new subsection providing, in pertinent part, that "if a judgment of guilt is set aside pursuant to this section, the person's right to possess a gun or firearm is restored." (Laws 2015, Ch. 228)

A.R.S. § 13-907 has been amended several times over the years, including renumbering to § 13-905. The pertinent provision relating to firearms, A.R.S. § 13-905(O), now reads:

Notwithstanding § 13-910, if a conviction is set aside, the person's right to possess a firearm is restored. This subsection does not apply to a person who was convicted of a serious offense as defined in § 13-706.

Accordingly, when the court grants a set aside for a non-serious offense, the firearm rights suspended due to that conviction are automatically restored by operation of law as a collateral benefit of the set aside, and the defendant is not required to separately request restoration through the process set out in A.R.S. § 13-906 et seq.

II. Grounds for Approval

Criminal Form 31(a) (“application to set aside conviction”) and Form 31(b) (“order regarding application to set aside conviction and restore firearm rights”) have been promulgated to facilitate the conviction set aside process. However, stakeholders have recently reported that the language on Criminal Form 31(a) and Form 31(b) relating to the restoration of firearm rights is causing confusion, more thoroughly explained below. Temporary clarifying amendments to Forms 31(a) and 31(b) were adopted through Administrative Order (AO) No. [2025-215](#) until a rule petition could be considered by this Court.

Petitioner therefore files this petition to propose amendments to Forms 31(a) and 31(b) to clarify the language on these forms. Petitioner’s proposed amendments are consistent with the amendments temporarily adopted by AO 2025-215 and are set forth in Appendix A.

III. Content of Proposed Amendments

A. Form 31(a)

The caption of Form 31(a) reiterates that a person applying to have a conviction set aside is not required to separately file an application to restore their firearm rights, by stating “**Note:** Your application may entitle you to restoration of the right to possess and carry a firearm pursuant to A.R.S. § 13-905(O).” Accordingly, when an Application is submitted, the court will decide whether to grant or deny the Application. The court does not grant or deny the restoration of

firearm rights through the set aside process—it grants or denies the request to set the conviction aside and the restoration of firearm rights follows when the conviction was for a non-serious offense. Moreover, if the conviction is for a serious offense, the court cannot restore the applicant’s firearm rights through the set aside process—the person would have to separately apply as set out in Criminal Rule 30 and A.R.S. § 13-906 et seq. Yet the phrase “granted the right to possess and carry a firearm” on page 3 of Form 31(a) suggests that the court will also separately “grant” or “deny” the restoration of firearm rights through the set aside process:

I understand that even if I am **granted** the right to possess and carry a firearm pursuant to this application, I may still be prohibited from possessing and carrying a firearm under other state or federal laws. (Emphasis added)

Petitioner therefore proposes changing the word “granted” to “restored,” on Form 31(a) so that the statement instead reads:

I understand that even if I am **restored** the right to possess and carry a firearm pursuant to this application, I may still be prohibited from possessing and carrying a firearm under other state or federal laws. (Emphasis added)

The proposed amendment more accurately reflects the legal framework relating to how firearm rights are restored through the set aside process and is sufficiently general so that it covers the scenario where the individual’s firearm rights are automatically restored on the granting of the Application (non-serious

offenses) as well as the scenario where the individual's firearm rights are not automatically restored on the granting of the Application (serious offenses).

B. Form 31(b)

Despite the automatic firearms restoration provided under A.R.S. § 13-905(O), Form 31(b) includes a checkbox under the orders section relating to the restoration of firearm rights that suggests the court needs to make a separate order relating to firearm rights restoration:

IT IS ORDERED:

* * *

[] **GRANTING** the application setting aside the judgment of guilt . . .

* * *

[] 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.

While these checkboxes presumably are intended to advise the applicant as to whether the granting of the Application restored his or her firearm rights pursuant to A.R.S. § 13-905(O), these checkboxes create confusion when: (1) the Application is

granted, (2) the conviction was for a non-serious offense, and (3) the court does not mark the checkbox indicating that the applicant's firearm rights are restored.

Accordingly, Petitioner proposes amending Form 31(b) as shown in Appendix A to remove the checkbox stating, "The applicant's right to possess a firearm is also **restored**." Since restoration happens by operation of law when the offense is a non-serious offense, there is no need for the court to make such an order and as discussed above, this checkbox has created confusion.

The second checkbox currently provides language for an order denying the defendant's right to possess firearms. But as discussed previously, under A.R.S. § 13-905, the right to possess a firearm is not granted or denied under the set aside process—it is either restored automatically, or it isn't. Moreover, the only time an applicant's firearm rights will not be restored is when the conviction that forms the basis for restricting firearms was for a serious offense. And in such circumstances, restoration is not "denied"—it simply isn't applicable because it does not and cannot happen through the set aside process under A.R.S. § 13-905. For these reasons, the language of this checkbox is better phrased as addressing what the order relating to the Application does and does not do, rather than an order "denying" the right to possess a firearm.

Petitioner therefore proposes amending the text from "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” to “The defendant’s right to possess a firearm is **NOT** restored by this Order because the conviction was for a serious offense as defined in A.R.S. § 13-706, and the defendant’s right to possess a firearm cannot be restored through this application.”

Based on the aforementioned proposed amendment, Petitioner additionally proposes also adding corresponding text to the findings portion of Form 31(b), so that the court can indicate, when applicable, that the conviction for which the defendant has applied to have set aside is for a serious offense as defined in A.R.S. § 13-706.

Petitioner further proposes adding additional language to Form 31(b) indicating that even if the defendant’s right to possess and carry a firearm is restored under A.R.S. § 13-905(O), the defendant may still be prohibited from possessing a firearm under other state or federal laws or based on other convictions. This language tracks the notice provided on Form 32(b) (“order regarding application to restore civil rights and firearm rights”).

Lastly, Petitioner proposes a conforming change to the heading of Form 31(b), so that it matches the text in the form’s caption. Specifically, Petitioner proposes the following change (additions shown in underline and deletions shown in ~~striketrough~~), also reflected in Appendix A:

Form 31(b). Order Regarding Application to Set Aside

Conviction and ~~Restore~~ Restoration of Firearm Rights

V. Similar Petitions in Last Five Years

Forms 31(a) and 31(b) were last amended in 2023 ([R-23-0038](#)) and 2024 ([R-24-0049](#)) to implement legislation. However, these amendments did not pertain to the subject matter raised in this petition. Petitioner is therefore not aware of any other rule petitions filed in the past five years that impact the rule amendments proposed in this petition.

VI. Request

Petitioner respectfully requests that this Court open this petition for public comment, consider the petition and comments in the regular course provided by Supreme Court Rule 28, and adopt the proposed amendments as set forth in Appendix A.

Respectfully submitted this 6th day of January, 2026.

By /s/ David K. Byers
David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, Arizona 85007
(602) 452-3301
Projects2@courts.az.gov

APPENDIX A

(deletions shown with strikethrough, new language is underlined)

Rule 41. Forms. [No change to text]

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: ☐ Defendant ☐ Attorney for Defendant ☐ Probation Officer	Case Number: _____ APPLICATION TO SET ASIDE CONVICTION (A.R.S. § 13-905) Note: Your application may entitle you to restoration of the right to possess and carry a firearm pursuant to A.R.S. § 13-905(O)
--	--

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.

I understand that even if I am ~~granted~~restored the right to possess and carry a firearm pursuant to this application, I may still be prohibited from possessing and carrying a firearm under other state or federal laws.

I understand that this application may be denied if information in this application is found to be inaccurate.

I declare under penalty of perjury that, to the best of my knowledge, the information provided in this application and any attachments is true and correct.

Print Defendant's Name

Defendant's Signature

Address

OR

AUTHORIZATION TO PROCEED ON BEHALF OF DEFENDANT

I authorize _____ [] Attorney, or [] Probation Officer to

petition the _____ Court in _____ County, to take the above-indicated action.

Date

Defendant's Signature

To the best of my knowledge, the information provided in this application is true and correct.

Print Attorney/Probation Officer Name

Attorney/Probation Officer Signature

Attorney/Probation Officer Address

Form 31(b). Order Regarding Application to Set Aside Conviction and ~~Restore~~Restoration of Firearm Rights

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

STATE OF ARIZONA, Plaintiff -vs- _____ Defendant (FIRST, MI, LAST) Date of Birth: _____	Case Number: _____ ORDER REGARDING APPLICATION TO SET ASIDE CONVICTION AND RESTORATION OF FIREARM RIGHTS A.R.S. §§ 13-905 & 13-910
---	---

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.

☐ The conviction for which the defendant has applied to have set aside is for a serious offense as defined in A.R.S. § 13-706.

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~~ defendant's right to possess a firearm is **DENIED** ~~due to the applicant's~~ **NOT** restored by this Order because the conviction was for a serious offense as defined in section A.R.S. § 13-706, and the defendant's right to possess a firearm cannot be restored through this application.

Even if your right to possess and carry a firearm is restored under A.R.S. § 13-905(O), you may still be prohibited from possessing a firearm under other state or federal laws or based on other convictions.

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, 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); 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