

1 ELLEN SUE KATZ, AZ Bar. No. 012214  
2 BRENDA MUÑOZ FURNISH, AZ Bar. No. 027280  
3 WILLIAM E. MORRIS INSTITUTE FOR JUSTICE  
3707 North Seventh Street, Suite 300  
4 Phoenix, Arizona 85014-5095  
5 (602) 252-3432  
6 eskatz@qwestoffice.net  
7 bmfurnish@qwestoffice.net

8 IN THE SUPREME COURT

9 STATE OF ARIZONA

10 PETITION TO ADOPT RULE 36, RULES  
11 OF CRIMINAL PROCEDURE

Supreme Court No. R-21-0023

**COMMENTS IN SUPPORT OF  
PETITION TO ADOPT NEW RULE 36  
OF THE RULES OF CRIMINAL  
PROCEDURE**

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13 Pursuant to Rule 28 of the Rules of the Supreme Court, Community Legal  
14 Services (“CLS”), DNA People’s Legal Services (“DNA”), Southern Arizona Legal Aid  
15 (“SALA”) and the William E. Morris Institute for Justice (“Institute”) submit these  
16 comments in support of the Petition to Adopt Rule 36 of the Rules of Criminal Procedure.  
17 The Petition filed by the Arizona Administrative Office of the Courts requests that the  
18 Court adopt a new rule of criminal procedure to implement A.R.S. § 36-2862, which was  
19 enacted as part of Proposition 207, the “Smart and Safe Arizona Act.” Passed in  
20 November 2020, Proposition 207 legalized recreational marijuana in the state and A.R.S.  
21 § 36-2862 permits the expungement of criminal history related to specific marijuana  
22 offenses. Currently, there are no procedures for the courts on how to accept and process  
23 requests for expungement. The proposed rule sets forth these procedures, including (1)  
24 what a petition for expungement must include (Proposed Rule 36 (a)(1)), (2) how the  
25 courts must process the petition (Proposed Rule 36 (b)), (3) the possible dispositions for a  
26 petition (Proposed Rule 36 (d)), and (4) who is to be contacted once a petition is granted  
27 (Proposed Rule 36 (e)).

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1 CLS, DNA, SALA and the Institute fully support the Petition and state the  
2 following:

3 **I. Statement of Interest**

4 CLS, DNA and SALA are federally funded civil legal services programs for low-  
5 income Arizonans. The legal services programs often represent formally incarcerated  
6 persons. Legal services attorneys understand the significant impact criminal convictions,  
7 charges and arrests have on low-income and other vulnerable persons.

8 The Institute is a non-profit program established to advocate and litigate on behalf  
9 of the interests of low-income and other vulnerable Arizonans. We work closely with the  
10 three federally funded legal services programs, other legal advocacy programs and  
11 community groups on a variety of issues, including those that affect formally incarcerated  
12 persons and persons with a history of contact with the criminal justice system.

13 **II. The Impact of Marijuana Offenses on African American Arizonans**

14 In November 2020, Arizona voters passed Proposition 207, which legalized  
15 recreational marijuana in the state. Along with the decriminalization of marijuana, the  
16 proposition also created a new statute, A.R.S. § 36-2862, permitting the expungement of  
17 criminal history related to specific marijuana offenses. A.R.S. § 36-2862 and the  
18 proposed rule are important to address the impact marijuana charges and convictions  
19 have on persons, particularly African American persons.

20 Police officers in the United States make more arrests for marijuana offenses than  
21 any other drug.<sup>1</sup> In 2018, officers made about 663,000 arrests for marijuana-related  
22 offenses nationwide, or 40% of the total drug arrests in the U.S. for that year.<sup>2</sup> 92% of  
23 those arrests were for possession. There are also stark racial disparities in marijuana  
24 possession arrests. Even though marijuana usage is roughly the same in both white and

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26 <sup>1</sup> John Gramlich, Four-in-Ten U.S. Drug Arrests in 2018 Were for Marijuana  
27 Offenses – Mostly Possession, FactTank Pew Research Center (Jan. 22, 2020),  
<https://www.pewresearch.org/fact-tank/2020/01/22/four-in-ten-u-s-drug-arrests-in-2018-were-for-marijuana-offenses-mostly-possession/>.

28 <sup>2</sup> *Id.*

1 African American communities, African Americans are 3.64 times more likely to be  
2 arrested for marijuana possession than white persons.<sup>3</sup> In 2018, African American  
3 persons living in Arizona were 3.04 times more likely to be arrested for marijuana  
4 possession than white persons.<sup>4</sup>

5 A marijuana arrest or conviction can have a lasting impact on the individual  
6 arrested and their family. Arrests and convictions have significant financial costs –  
7 lawyers’ fees, fines and other court charges, lost income and lost assets – that many  
8 persons, particularly low-income persons cannot afford.<sup>5</sup> Also, persons with a criminal  
9 history face barriers to finding housing and jobs, which in turn can lead to homelessness  
10 and food insecurity.<sup>6</sup> These barriers make it harder for formally incarcerated persons to  
11 reintegrate into society. Roughly three-quarters of persons released from prison are  
12 rearrested within five years of their release. *Id.*

13 The proposed rule will help address the impact of past arrests and convictions and  
14 allow affected persons the opportunity to live without the hindrance of these marks on  
15 their records.

### 16 **III. The Importance of Having Clear Procedures for the Expungement Process**

17 The proposed rule has clear instructions on how persons can apply to have their  
18 criminal records expunged, how courts are to process these applications, and how law  
19 enforcement and charging agencies are to respond to pending and approved applications.

20 Since A.R.S. § 36-2862 is a new statute, the expungement process will also be

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21 <sup>3</sup> American Civil Liberties Union, *A Tale of Two Countries: Racially Targeted*  
22 *Arrests in the Era of Marijuana Reform*, (2020), [https://www.aclu.org/sites/default/](https://www.aclu.org/sites/default/files/field_document/tale_of_two_countries_racially_targeted_arrests_in_the_era_of_marijuana_reform_revised_7.1.20_0.pdf)  
23 [files/field\\_document/tale\\_of\\_two\\_countries\\_racially\\_targeted\\_arrests\\_in\\_the\\_era\\_of\\_mar](https://www.aclu.org/sites/default/files/field_document/tale_of_two_countries_racially_targeted_arrests_in_the_era_of_marijuana_reform_revised_7.1.20_0.pdf)  
[ijuana\\_reform\\_revised\\_7.1.20\\_0.pdf](https://www.aclu.org/sites/default/files/field_document/tale_of_two_countries_racially_targeted_arrests_in_the_era_of_marijuana_reform_revised_7.1.20_0.pdf).

24 <sup>4</sup> *Id.*

25 <sup>5</sup> Katherine Beckett and Steve Herbert, *The Consequences and Costs of Marijuana*  
26 *Prohibition*, University of Washington, [https://faculty.washington.edu/kbeckett/The%20](https://faculty.washington.edu/kbeckett/The%20Consequences%20and%20Costs%20of%20Marijuana%20Prohibition.pdf)  
[Consequences%20and%20Costs%20of%20Marijuana%20Prohibition.pdf](https://faculty.washington.edu/kbeckett/The%20Consequences%20and%20Costs%20of%20Marijuana%20Prohibition.pdf).

27 <sup>6</sup> Melissa Li, *From Prisons to Communities: Confronting Re-Entry Challenges and*  
28 *Social Inequality*, American Psychological Association (Mar. 2018), [https://www.apa.](https://www.apa.org/pi/ses/resources/indicator/2018/03/prisons-to-communities)  
[org/pi/ses/resources/indicator/2018/03/prisons-to-communities](https://www.apa.org/pi/ses/resources/indicator/2018/03/prisons-to-communities).

1 new, both for the public and for the courts and agencies administering applications.  
2 Because of this, persons wanting to apply for expungement may find the process  
3 confusing. Courts and agencies also may have a hard time knowing how to process these  
4 applications correctly and efficiently. The proposed rule seeks to address these  
5 anticipated problems and has specific instructions on the application and administrative  
6 parts of the expungement process. This will help ensure that the new statute is  
7 implemented as smoothly as possible, and that the intent of Proposition 207 is honored.

8 **IV. Recommendations to the Proposed Rule**

9 The proposed rule does a good job of laying out the specifics of the expungement  
10 process, which will ensure its smooth implementation. CLS, DNA, SALA and the  
11 Institute, however, have two recommended changes to the proposed rule as follows:

12 **Petitioner’s Signature; Attachments**

13 The proposed rule allows petitioners to attach supporting documents to the petition  
14 for expungement. Proposed Rule 36 (a)(2). We recommend that the proposed rule list  
15 examples of acceptable supporting documents.

16 **Sufficiency of the Petition**

17 The proposed rule states “The court may dismiss a petition that fails to provide  
18 sufficient information to identify the records to be expunged.” Proposed Rule 36 (b)(1).  
19 We recommend that the rule also state that the court must notify the petitioner of the  
20 application’s deficiencies and give the petitioner an opportunity to correct those  
21 deficiencies before the application is dismissed.

22 **V. Conclusion**

23 CLS, DNA, SALA, and the Institute request that the Court approve the Petition  
24 filed by the Arizona Administrative Office of the Courts. The Petition seeks to adopt a  
25 new Rule 36, to implement a new statute, A.R.S. § 36-2862, permitting the expungement  
26 of criminal history related to specific marijuana offenses. The creation of new Rule 36  
27 will help address the impact of past marijuana arrests and convictions and will provide  
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the necessary guidance to ensure a smooth expungement process. For these reasons,  
CLS, DNA, SALA and the Institute request the Court approve the Petition.

Respectfully submitted this 19<sup>th</sup> day of April 2021.

COMMUNITY LEGAL SERVICES  
DNA PEOPLE’S LEGAL SERVICES  
SOUTHERN ARIZONA LEGAL AID  
WILLIAM E. MORRIS INSTITUTE FOR JUSTICE

By /s/ Ellen Sue Katz  
Ellen Sue Katz  
3707 North Seventh Street, Suite 300  
Phoenix, Arizona 85014-5095

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By: /s/ Ellen Sue Katz