

REFERENCE TITLE: **setting aside conviction; certificate eligibility**

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

## **SB 1036**

Introduced by  
Senator Kavanagh

**AN ACT**

**AMENDING SECTION 13-905, ARIZONA REVISED STATUTES; RELATING TO THE RESTORATION OF CIVIL RIGHTS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-905, Arizona Revised Statutes, is amended to  
3 read:

4 13-905. Setting aside judgment of convicted person on  
5 discharge; application; release from disabilities;  
6 certificate of second chance; firearm possession;  
7 exceptions

8 A. Except as provided in subsection ~~N~~ P of this section, every  
9 person convicted of a criminal offense, on fulfillment of the conditions  
10 of probation or sentence and discharge by the court, may apply to the  
11 court to have the judgment of guilt set aside. The convicted person shall  
12 be informed of this right at the time of sentencing. The court may issue  
13 an order that includes a certificate of second chance to a person whose  
14 judgment of guilt is set aside pursuant to subsection K or ~~N~~ N of this  
15 section.

16 B. The person or the person's attorney or probation officer may  
17 apply to set aside the judgment. The clerk of the court may not charge a  
18 filing fee for an application to have a judgment of guilt set aside.

19 C. The court shall consider the following factors when determining  
20 whether to set aside the conviction:

21 1. The nature and circumstances of the offense that the conviction  
22 is based on.

23 2. The applicant's compliance with the conditions of probation, the  
24 sentence imposed and any state department of corrections' rules or  
25 regulations, if applicable.

26 3. Any prior or subsequent convictions.

27 4. The victim's input and the status of victim restitution, if any.

28 5. The length of time that has elapsed since the completion of the  
29 applicant's sentence.

30 6. The applicant's age at the time of the conviction.

31 7. Any other factor that is relevant to the application.

32 D. If the application is granted, the court shall set aside the  
33 judgment of guilt, dismiss the complaint, information or indictment and  
34 order that the person be released from all penalties and disabilities  
35 resulting from the conviction except those imposed by:

36 1. The department of transportation pursuant to section 28-3304,  
37 28-3305, 28-3306, 28-3307, 28-3308, 28-3312 or 28-3319.

38 2. The game and fish commission pursuant to section 17-314 or  
39 17-340.

40 E. A conviction that is set aside may be:

41 1. Used as a conviction if the conviction would be admissible had  
42 it not been set aside.

43 2. Alleged as an element of an offense.

44 3. Used as a prior conviction.

1 4. Plead and proved in any subsequent prosecution of the person  
2 by this state or any political subdivision of this state for any offense.

3 5. Used by the department of transportation in enforcing section  
4 28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312 or 28-3319 as if the  
5 judgment of guilt had not been set aside.

6 F. The clerk of the court must notify the department of public  
7 safety if a conviction is set aside. The department of public safety must  
8 update the person's criminal history with an annotation that the  
9 conviction has been set aside and, if applicable, a certificate of second  
10 chance has been issued but may not redact or remove any part of the  
11 person's record.

12 G. This section does not:

13 1. Require a law enforcement agency to redact or remove a record or  
14 information from the record of a person whose conviction is set aside.

15 2. Preclude the department of public safety or the board of  
16 fingerprinting from considering a conviction that has been set aside when  
17 evaluating an application for a fingerprint clearance card pursuant to  
18 section 41-1758.03 or 41-1758.07.

19 H. If the state or the victim objects to an application to have a  
20 judgment of guilt set aside, an objection to the application must be filed  
21 within thirty days after the application is filed with the court. If an  
22 objection is filed, the court may set a hearing.

23 I. If the court denies an application to have a judgment of guilt  
24 set aside, the court shall state its reasons for the denial in writing and  
25 on the record.

26 J. A victim has the right to be present and be heard at any  
27 proceeding in which the defendant has filed an application to have a  
28 judgment of guilt set aside pursuant to this section. If the victim has  
29 made a request for postconviction notice, the attorney for the state shall  
30 provide the victim with notice of the defendant's application, **OF** whether  
31 the person is eligible for a certificate of second chance and of the  
32 rights provided to the victim in this section.

33 K. If the court grants the application to set aside the judgment of  
34 guilt, the court's order must include a certificate of second chance if  
35 the person ~~has not previously received a certificate of second chance and~~  
36 ~~the person~~ was convicted of **ANY OF THE FOLLOWING:**

37 1. A misdemeanor. ~~, if the person was convicted of~~

38 2. A class 4, 5 or 6 felony and at least two years have elapsed  
39 since the person fulfilled the conditions of probation or sentence. ~~or if~~  
40 ~~the person was convicted of~~

41 3. A class 2 or 3 felony and at least five years have elapsed since  
42 the person fulfilled the conditions of probation or sentence.

43 **L. NOTWITHSTANDING SUBSECTION K OF THIS SECTION, A PERSON IS NOT**  
44 **ELIGIBLE FOR A CERTIFICATE OF SECOND CHANCE IF THE PERSON HAS PREVIOUSLY**  
45 **RECEIVED A CERTIFICATE OF SECOND CHANCE ON THE SET ASIDE OF A FELONY**

1 CONVICTION. FOR THE PURPOSES OF THIS SUBSECTION, "FELONY CONVICTION"  
2 INCLUDES MULTIPLE FELONY CONVICTIONS RESULTING FROM THE SAME ACT OR COURSE  
3 OF CONDUCT.

4 M. The certificate of second chance:

5 1. Unless specifically excluded by this section, releases the  
6 person from all barriers and disabilities in obtaining an occupational  
7 license issued under title 32 that resulted from the conviction if the  
8 person is otherwise qualified.

9 2. Provides an employer of the person with all of the protections  
10 that are provided pursuant to section 12-558.03.

11 3. Provides another person or an entity that provides housing to  
12 the person with all of the protections limiting the introduction of  
13 evidence that are provided to an employer pursuant to section 12-558.03,  
14 subsection B.

15 4. Is not a recommendation or sponsorship for or a promotion of the  
16 person who possesses the certificate of second chance when applying for an  
17 occupational license, employment or housing.

18 ~~N.~~ N. If the court does not issue an order that includes a  
19 certificate of second chance when the person's conviction is set aside,  
20 the person, **UNLESS OTHERWISE PRECLUDED BY THIS SECTION**, may apply to the  
21 court for a certificate of second chance after meeting the requirements  
22 prescribed in subsection K of this section. If a victim has made a  
23 request for postconviction notice, the attorney for the state shall  
24 provide the victim with notice of the person's application for a  
25 certificate of second chance and the victim's rights under this section.

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

30 ~~N.~~ P. This section does not apply to a person who was convicted of  
31 any of the following:

32 1. A dangerous offense.

33 2. An offense for which the person is required or ordered by the  
34 court to register pursuant to section 13-3821.

35 3. An offense for which there has been a finding of sexual  
36 motivation pursuant to section 13-118.

37 4. A felony offense in which the victim is a minor under fifteen  
38 years of age.