

REFERENCE TITLE: lifetime injunction; petition; procedures

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

SB 1582

Introduced by
Senator Kerr

AN ACT

AMENDING SECTIONS 13-719, 13-905 AND 13-911, ARIZONA REVISED STATUTES;
RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-719, Arizona Revised Statutes, is amended to
3 read:

4 13-719. Lifetime injunction; offenses; registration;
5 previously sentenced defendants

6 A. At the time of sentencing, on the request of the victim or the
7 prosecutor, the court shall issue an injunction that prohibits the
8 defendant from contacting the victim if the defendant is convicted of any
9 of the following offenses, whether completed or preparatory:

10 1. A dangerous offense as defined in section 13-105 that is a
11 felony.

12 2. A serious offense or violent or aggravated felony as defined in
13 section 13-706.

14 3. A felony offense included in chapter 14 or 35.1 of this title.

15 B. An injunction issued pursuant to SUBSECTION A OF this section is
16 effective immediately and shall be served on the defendant at the time of
17 sentencing.

18 C. The court shall provide information to the department of public
19 safety to register the injunction with the national crime information
20 ~~system~~ CENTER and shall notify the victim of the injunction.

21 D. ~~IF THE VICTIM DID NOT REQUEST AN INJUNCTION AT THE TIME OF~~
22 ~~SENTENCING PURSUANT TO SUBSECTION A OF THIS SECTION OR THE SENTENCING~~
23 ~~OCCURRED BEFORE SEPTEMBER 24, 2022,~~ THE victim may submit a petition to
24 the court requesting an injunction against a defendant who was sentenced
25 for an offense listed in subsection A of this section, ~~before September~~
26 ~~24, 2022~~ AND THE COURT MAY NOT CHARGE A FEE FOR FILING THE PETITION. A
27 law enforcement agency shall serve an injunction issued pursuant to this
28 subsection at no charge to the victim.

29 E. An injunction that is issued pursuant to this section does not
30 expire and is valid for the defendant's natural lifetime unless any of the
31 following occurs:

32 1. The defendant makes a showing to the court that either:

33 (a) The victim has died.

34 (b) The conviction has been dismissed, expunged or overturned or
35 the defendant has been pardoned.

36 2. The victim submits a written request to the court for an early
37 expiration. The court may hold a hearing to verify the victim's request
38 to dismiss the injunction.

39 NOTWITHSTANDING ANY OTHER LAW, A CONVICTION THAT IS SET ASIDE
40 PURSUANT TO SECTION 13-905 OR SEALED PURSUANT TO SECTION 13-911 DOES NOT
41 AFFECT THE VALIDITY OF A LIFETIME INJUNCTION THAT IS ISSUED PURSUANT TO
42 THIS SECTION AND DOES NOT PROHIBIT A VICTIM FROM SUBMITTING A PETITION TO
43 THE COURT REQUESTING A LIFETIME INJUNCTION.

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

3 13-905. Setting aside judgment of convicted person on
4 discharge; application; release from disabilities;
5 certificate of second chance; firearm possession;
6 exceptions

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

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

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

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

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

25 3. Any prior or subsequent convictions.

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

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

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

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

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

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

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

39 3. A LIFETIME INJUNCTION THAT IS ISSUED PURSUANT TO SECTION 13-719.

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. Pledged 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 6. USED AS THE BASIS TO ISSUE A LIFETIME INJUNCTION PURSUANT TO
7 SECTION 13-719.

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

14 G. This section does not:

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

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

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

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

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

35 K. If the court grants the application to set aside the judgment of
36 guilt, the court's order must include a certificate of second chance if
37 the person has not previously received a certificate of second chance and
38 the person was convicted of a misdemeanor, if the person was convicted of
39 a class 4, 5 or 6 felony and at least two years have elapsed since the
40 person fulfilled the conditions of probation or sentence or if the person
41 was convicted of a class 2 or 3 felony and at least five years have
42 elapsed since the person fulfilled the conditions of probation or
43 sentence. The certificate of second chance:

44 1. Unless specifically excluded by this section, releases the
45 person from all barriers and disabilities in obtaining an occupational

1 license issued under title 32 that resulted from the conviction if the
2 person is otherwise qualified.

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

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

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

12 L. If the court does not issue an order that includes a certificate
13 of second chance when the person's conviction is set aside, the person may
14 apply to the court for a certificate of second chance after meeting the
15 requirements prescribed in subsection K of this section. If a victim has
16 made a request for postconviction notice, the attorney for the state shall
17 provide the victim with notice of the person's application for a
18 certificate of second chance and the victim's rights under this section.

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

23 N. This section does not apply to a person who was convicted of any
24 of the following:

25 1. A dangerous offense.

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

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

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

32 Sec. 3. Section 13-911, Arizona Revised Statutes, is amended to
33 read:

34 13-911. Sealing of arrest, conviction and sentencing records;
35 requirements; fee; appeal; definition

36 A. A person may file a petition to seal all case records related to
37 a criminal offense if the person was:

38 1. Convicted of a criminal offense and has completed all of the
39 terms and conditions of the sentence that was imposed by the court,
40 including the payment of all monetary obligations and restitution to all
41 victims.

42 2. Charged with a criminal offense and the charge was subsequently
43 dismissed or resulted in a not guilty verdict at a trial.

44 3. Arrested for a criminal offense and no charges were filed.

1 B. All case records that are sealed pursuant to this section may
2 be:

- 3 1. Alleged as an element of an offense.
- 4 2. Used as a historical prior felony conviction.
- 5 3. Admissible for impeaching any party or witness in a subsequent
6 trial.
- 7 4. Used to enhance the sentence for a subsequent felony.
- 8 5. Used to enhance the sentence pursuant to sections 28-1381 and
9 28-1382.
- 10 6. Pleaded and proved in any subsequent prosecution of the person
11 by this state or a political subdivision of this state.
- 12 7. Used as a conviction if the conviction would be admissible if
13 the conviction was not sealed.

14 C. The person shall file a petition to seal all case records in one
15 of the following:

- 16 1. The court in which the person was convicted of an offense.
- 17 2. The court in which an indictment, information, criminal citation
18 or complaint against the person was filed and the charges were dismissed,
19 the person was found not guilty or the person's conviction was vacated,
20 except that if the complaint was filed in a justice court and A subsequent
21 information was filed, the petition must be filed in the superior court.
- 22 3. The court in which the person had an initial appearance if
23 charges were not filed.
- 24 4. The superior court in the county where a person was arrested if
25 the person did not have an initial appearance and no charges were filed.

26 D. The court may not grant or deny a petition to seal a person's
27 case records until thirty calendar days after the court receives the
28 petition unless the court receives notice that both the prosecutor and all
29 victims who have made a request for postconviction notice do not object to
30 the petition. Unless the petitioner, prosecutor or victim requests a
31 hearing, the court may grant or deny a petition to seal case records
32 without a hearing. The court may dismiss a petition that does not meet
33 the requirements prescribed in this section without a hearing. The court
34 shall grant the petition if the court determines that granting the
35 petition is in the best interests of the petitioner and the public's
36 safety. The clerk of the court shall provide a copy of the petition to
37 seal case records to the prosecutor. The prosecutor may respond to the
38 petition and request a hearing. The victim has a right to be present and
39 heard at any proceeding in which the defendant has filed a petition to
40 seal case records. If the victim has made a request for postconviction
41 notice, the prosecutor shall provide the victim with notice of the
42 defendant's petition and of the victim's rights under this section.

43 E. At the time of sentencing, the court shall inform the person on
44 the record that the person may be eligible to petition the court for an
45 order that seals all case records of the person's arrest, conviction and

1 sentence that are related to the offense pursuant to this section and
 2 shall provide this notice in writing. A person who was convicted of an
 3 offense and who has not subsequently been convicted of any other offense
 4 except a misdemeanor violation included in title 28, excluding a
 5 conviction for a violation of section 28-1381, 28-1382 or 28-1383, may
 6 petition the court to seal the person's records of arrest, conviction and
 7 sentence after the person completes all of the terms and conditions of the
 8 person's sentence, including paying all fines, fees and restitution that
 9 are ordered by the court, and the following period of time has passed
 10 since the person completed the conditions of probation or sentence and was
 11 discharged by the court:

- 12 1. Ten years for a class 2 or 3 felony.
- 13 2. Five years for a class 4, 5 or 6 felony.
- 14 3. Three years for a class 1 misdemeanor.
- 15 4. Two years for a class 2 or 3 misdemeanor.

16 F. Notwithstanding subsection E of this section, if the person has
 17 a prior historical felony conviction, the person may petition the court to
 18 seal the person's records of arrest, conviction and sentence pursuant to
 19 subsection E of this section after an additional five years.

20 G. A person who is convicted of two or more offenses may not
 21 petition the court to seal the person's case records until the period of
 22 time prescribed in subsection E of this section has passed for each
 23 conviction.

24 H. After a petition to seal case records is filed, the court shall
 25 notify the department of public safety and request the department to
 26 prepare and submit a report to the court that includes all of the
 27 petitioner's state and federal arrests, prosecutions and convictions and
 28 any other information that the court requests or that the department
 29 believes will assist the court in making its determination. The director
 30 may charge the petitioner a fee that is determined by the director for the
 31 investigation unless the petitioner is indigent or has been found not
 32 guilty or the case was dismissed or not prosecuted and the petition is
 33 filed pursuant to subsection C, paragraph 2 or 3 of this section.

34 I. If the court grants a petition to seal case records:

35 1. The court shall issue an order sealing all records relating to
 36 the petitioner's arrest, conviction and sentence and directing the clerk
 37 of the court to notify the department of public safety and the prosecutor
 38 of the sealing order.

39 2. On order of a court, the clerk of the court shall seal all case
 40 records relating to the petitioner's arrest, conviction and sentence. A
 41 court order to seal case records pursuant to this section is subject only
 42 to the disclosure requirements in this section and shall be treated
 43 differently than a record that is sealed pursuant to any other statute or
 44 court rule. The clerk shall create and manage a system for sealing case
 45 records pursuant to this section and for providing sealed case records to

1 an entity or person that is listed in subsection J of this section and
2 that requests the record. On the request of an entity or person listed in
3 subsection J of this section, the clerk shall provide the entity or person
4 with any sealed case records. The clerk may not provide sealed case
5 records pursuant to this section to any person or entity that is not
6 listed in subsection J of this section.

7 3. The department of public safety shall designate the case records
8 as sealed within the department's records and inform all appropriate state
9 and federal law enforcement agencies of the sealing. The department may
10 not share or provide sealed case records with any person or entity **OR FOR**
11 **ANY PURPOSE** that is not listed in subsections B and J of this section.
12 The department may charge the successful petitioner a fee determined by
13 the director to research and correct the petitioner's criminal history
14 record unless the petitioner is indigent or has been found not guilty or
15 the case has been dismissed or not prosecuted and the petition is filed
16 pursuant to subsection C, paragraph 2 or 3 of this section.

17 4. The arresting and prosecuting agencies shall clearly identify in
18 each agency's files and electronic records that the petitioner's arrest or
19 conviction and sentence records are sealed.

20 5. A person whose records are sealed pursuant to this section may
21 state, in all instances, that the person has never been arrested for,
22 charged with or convicted of the crime that is the subject of the arrest
23 or conviction, including in response to questions on employment, housing,
24 financial aid or loan applications unless any of the following applies:

25 (a) The person is submitting an application that requires a
26 fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

27 (b) The sealed case records involved a violation of chapter 34 of
28 this title.

29 (c) The sealed case records involved burglary or theft from a
30 residential or nonresidential structure and the person is applying for a
31 job that requires entering into and performing services inside of a
32 residential structure.

33 (d) The sealed case records involved child abuse or aggravated
34 assault and the person is applying for a job involving supervising,
35 educating or administering care to a minor.

36 (e) The sealed case records involved vulnerable adult abuse and the
37 person is applying for a job involving supervising or administering care
38 to a vulnerable adult or a person who is at least sixty-five years of age.

39 (f) The sealed case records involved a violation of section
40 5-395.01, 5-396, 5-397, 13-1814, 28-1381, 28-1382, 28-1383, 28-8282,
41 28-8284, 28-8286, 28-8287 or 28-8288 and the person is applying for a job
42 involving the commercial or private operation of a motor vehicle, boat or
43 airplane.

44 (g) The sealed case records involved theft, theft of means of
45 transportation, forgery, taking the identity of another or fraudulent

1 schemes and artifices and the person is applying for a job involving
2 accounting, overseeing, transporting, handling or managing another
3 person's money or financial assets.

4 (h) The person is applying for a position with a law enforcement
5 agency, a prosecutor's office, a court, a probation department, a child
6 welfare agency as defined in section 8-501, the department of child
7 safety, the department of juvenile corrections or the state department of
8 corrections.

9 (i) The person is undergoing a background check for the placement
10 with that person of a child who is in the custody of the department of
11 child safety.

12 (j) The disclosure is required by a state or federal law.

13 (k) The disclosure is required to comply with program integrity
14 provisions of medicare, medicaid or any other federal health care program.

15 6. The person's employer is not liable for hiring or contracting
16 with the person as prescribed in section 12-558.03.

17 J. If the person's case records are sealed pursuant to this
18 section, the records shall be made available for the purposes listed in
19 subsection B of this section and to the following:

20 1. The person whose records are sealed and any attorney who has
21 filed a notice of appearance on behalf of the person whose records are
22 sealed.

23 2. The victim in the case if the victim has exercised victims'
24 rights pursuant to section 13-4414.

25 3. Any of the following if the purpose relates to the operation of
26 the requesting party's official duties or internal hiring practices, or
27 both:

28 (a) A law enforcement agency.

29 (b) A prosecuting agency. On request of a person who is charged
30 with a criminal offense or that person's attorney of record, a prosecuting
31 agency shall provide the sealed case records of any person whom the
32 prosecuting agency intends to call as a witness in that person's
33 prosecution.

34 (c) A probation department or any agency that is responsible for
35 the preparation of a presentence report.

36 (d) A court.

37 (e) The department of child safety or a child welfare agency as
38 defined in section 8-501.

39 (f) The department of juvenile corrections.

40 (g) The state department of corrections or any other correctional
41 facility in this state.

42 (h) The clerk of the court or any department that is responsible
43 for maintaining court records.

44 K. This section does not require the supreme court or the court of
45 appeals to seal any record.

1 L. If the court denies a petition to seal case records, a person
2 may not file a new petition until three years after the date of the
3 denial.

4 M. A conviction for an offense that is committed in another
5 jurisdiction and that if committed in this state would not constitute an
6 offense in this state may not be used against the petitioner or prohibit
7 the petitioner from having a record sealed. For the purposes of this
8 section, the classification of an offense committed in another
9 jurisdiction has the classification that the offense would have if
10 committed in this state.

11 N. If the petitioner is charged with an offense after filing a
12 petition to seal case records and the offense could result in a conviction
13 that cannot be sealed or that could extend the time to file a petition to
14 seal case records, the court may not grant or deny the petition until the
15 court disposes of that charge.

16 O. This section does not apply to a person who is:

17 1. Sentenced as a dangerous offender pursuant to section 13-704.

18 2. Convicted of a dangerous crime against children as defined in
19 section 13-705.

20 3. Convicted of a serious offense or violent or aggravated felony
21 as defined in section 13-706.

22 4. Convicted of any offense that has either of the following as an
23 element of the offense:

24 (a) The discharge, use or threatening exhibition of a deadly weapon
25 or dangerous instrument.

26 (b) The knowing infliction of serious physical injury on another
27 person.

28 5. Convicted of sex trafficking pursuant to section 13-1307.

29 6. Convicted of a class 2, 3, 4 or 5 felony offense that is
30 included in chapter 14 or 35.1 of this title.

31 P. This section does not affect any of the following:

32 1. The right of the person whose case records are sealed to appeal
33 the conviction or sentence or to rely on it in bar of any subsequent
34 proceeding for the same offense.

35 2. The right of a law enforcement agency to maintain an arrest and
36 conviction record and to communicate information regarding the sealed
37 record of arrest or conviction to prosecuting agencies, courts, probation
38 departments and other law enforcement agencies for a purpose listed in
39 subsection J of this section or in defense of a civil action that arises
40 out of the facts of the arrest or to the Arizona peace officer standards
41 and training board solely to assist the board in determining the fitness
42 of a person to serve as a peace officer, except that in any of these cases
43 the information may not be disclosed to any person or entity that is not
44 listed in subsection J of this section.

1 3. The department of public safety or the board of fingerprinting
2 from considering a conviction that is sealed pursuant to this section when
3 evaluating an application for a fingerprint clearance card pursuant to
4 section 41-1758.03 or 41-1758.07.

5 4. A COURT FROM ISSUING A LIFETIME INJUNCTION PURSUANT TO SECTION
6 13-719 OR THE VALIDITY OF A LIFETIME INJUNCTION THAT WAS ISSUED PURSUANT
7 TO SECTION 13-719 AT THE TIME OF THE DEFENDANT'S SENTENCING.

8 Q. For the purposes of this section, "case records" means all
9 records that pertain to a person's arrest, conviction and sentence for a
10 particular offense and that may be sealed pursuant to this section.