

REFERENCE TITLE: *criminal records; expungement*

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2299

Introduced by
Representatives Sinema, Prezelski: Campbell CL, Gallardo, Lopes, Meza

AN ACT

AMENDING SECTION 13-4051, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 38, ARTICLE 19, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4052; RELATING TO CRIMINAL RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-4051, Arizona Revised Statutes, is amended to
3 read:

4 13-4051. Entry on records; stipulation; court order

5 A. Any person who is ~~wrongfully~~ arrested, indicted or otherwise
6 charged for any crime may petition the superior court for entry ~~upon~~ ON all
7 court records, police records and any other records of any other agency
8 relating to such arrest or indictment a notation that the person has been
9 cleared SUBJECT TO THE FOLLOWING CONDITIONS:

10 1. AT LEAST ONE HUNDRED EIGHTY DAYS HAVE PASSED SINCE THE ARREST,
11 INDICTMENT OR CHARGE FOR WHICH THE EXPUNGEMENT IS SOUGHT.

12 2. THERE HAVE BEEN NO INTERVENING ARRESTS.

13 3. ONE OF THE FOLLOWING HAS OCCURRED:

14 (a) THE PERSON WAS RELEASED WITHOUT THE FILING OF A CHARGE.

15 (b) THE PROCEEDINGS AGAINST THE PERSON WERE DISMISSED WITH PREJUDICE.

16 (c) THE PERSON WAS DISCHARGED WITHOUT A CONVICTION AND CHARGES WERE
17 NOT REFILED WITHIN ONE HUNDRED EIGHTY DAYS.

18 (d) THE PERSON WAS ACQUITTED AT TRIAL.

19 (e) THE RECORD OF ANY PROCEEDING AGAINST THE PERSON HAS BEEN SEALED.

20 B. A PERSON MAY PETITION THE COURT FOR EXPUNGEMENT BEFORE THE
21 EXPIRATION OF THE ONE HUNDRED EIGHTY DAY PERIOD IF EXTRAORDINARY
22 CIRCUMSTANCES ARE ALLEGED TO EXIST AND THE COURT FINDS THAT EXTRAORDINARY
23 CIRCUMSTANCES EXIST.

24 ~~B-~~ C. After a hearing on the petition, if the judge believes that
25 justice will be served by such entry, the judge shall issue the order
26 requiring the entry that the person has been cleared on such records, with
27 accompanying justification therefor, and shall ~~cause~~ DELIVER a copy of ~~such~~
28 THE order to ~~be delivered to~~ all law enforcement agencies and courts. The
29 order shall further require that all law enforcement agencies and courts
30 ~~shall~~ not release copies of ~~such~~ THE records to any person except ~~upon~~ ON
31 order of the court.

32 ~~C-~~ D. Any person who has notice of ~~such~~ THE order and WHO fails to
33 comply with the court order issued pursuant to this section shall be liable
34 to the person for damages from such failure.

35 E. UNLESS OTHERWISE PROVIDED BY LAW, A PERSON WHO RECEIVES AN
36 EXPUNGEMENT FOR AN ARREST, INDICTMENT OR CHARGE PURSUANT TO THIS SECTION MAY
37 RESPOND TO ANY INQUIRY AS THOUGH THE ARREST, INDICTMENT OR CHARGE DID NOT
38 OCCUR.

39 Sec. 2. Title 13, chapter 38, article 19, Arizona Revised Statutes, is
40 amended by adding section 13-4052, to read:

41 13-4052. Expungement of conviction; grounds; court order

42 A. A PERSON WHO IS CONVICTED OF A CRIMINAL OFFENSE MAY PETITION THE
43 CONVICTING COURT FOR AN EXPUNGEMENT OF THE RECORD OF CONVICTION. THE
44 PETITION SHALL BE FILED WITH THE COURT AND SERVED ON THE PROSECUTING
45 ATTORNEY.

1 B. THE COURT SHALL REQUEST THAT THE PROBATION DEPARTMENT EVALUATE THE
2 PETITION. THE EVALUATION SHALL INCLUDE:
3 1. A WRITTEN RECOMMENDATION CONCERNING THE PETITION FOR EXPUNGEMENT.
4 2. WHETHER THE PETITIONER HAS FULFILLED THE CONDITIONS OF SENTENCE OR
5 ANY TERM OF PROBATION, PAROLE OR COMMUNITY SUPERVISION.
6 3. THE STATEMENT OF A VICTIM WHO HAS REQUESTED NOTIFICATION OF
7 POSTCONVICTION MATTERS.
8 C. THE COURT SHALL DENY A PETITION FOR EXPUNGEMENT IF ANY OF THE
9 FOLLOWING APPLIES:
10 1. THE PETITIONER WAS CONVICTED OF EITHER:
11 (a) A VIOLENT OR AGGRAVATED FELONY AS DEFINED IN SECTION 13-713.
12 (b) A DANGEROUS CRIME AGAINST CHILDREN.
13 (c) AN OFFENSE THAT REQUIRES THE CONVICTED PERSON TO REGISTER PURSUANT
14 TO SECTION 13-3821.
15 2. THE PETITIONER HAS BEEN CONVICTED OF TWO OR MORE FELONY OFFENSES
16 THAT DID NOT ARISE OUT OF THE SAME SERIES OF ACTS. A CONVICTION OUTSIDE THE
17 JURISDICTION OF THIS STATE FOR AN OFFENSE THAT IF COMMITTED IN THIS STATE
18 WOULD BE PUNISHABLE AS A FELONY IS A FELONY CONVICTION FOR THE PURPOSES OF
19 THIS PARAGRAPH.
20 3. THE PETITIONER HAS BEEN CONVICTED OF FOUR OR MORE MISDEMEANOR
21 OFFENSES THAT DID NOT ARISE OUT OF THE SAME SERIES OF ACTS. A CONVICTION
22 OUTSIDE THE JURISDICTION OF THIS STATE FOR AN OFFENSE THAT IF COMMITTED IN
23 THIS STATE WOULD BE PUNISHABLE AS A MISDEMEANOR IS A MISDEMEANOR CONVICTION
24 FOR THE PURPOSES OF THIS PARAGRAPH.
25 4. THE PETITIONER HAS PREVIOUSLY OBTAINED EXPUNGEMENT IN ANY
26 JURISDICTION OF AN OFFENSE THAT WOULD BE A FELONY IN THIS STATE.
27 5. THE PETITIONER HAS ANY PENDING OR UNRESOLVED MATTERS IN ANY COURT
28 OR JURISDICTION IN THIS STATE OR ANOTHER STATE.
29 6. THE PETITIONER HAS NOT PAID THE FULL AMOUNT OF RESTITUTION OR ANY
30 FINE ORDERED PURSUANT TO SECTION 13-603.
31 D. THE COURT SHALL NOT CONSIDER A PETITION FOR EXPUNGEMENT UNTIL AFTER
32 THE PETITIONER IS RELEASED FROM PROBATION, PAROLE OR COMMUNITY SUPERVISION OR
33 IS DISCHARGED AND AT LEAST THE FOLLOWING TIME HAS ELAPSED:
34 1. SEVEN YEARS IF THE CONVICTION IS FOR A FELONY.
35 2. FOUR YEARS IF THE CONVICTION IS FOR A MISDEMEANOR.
36 E. AFTER A HEARING ON THE PETITION, IF THE JUDGE BELIEVES THAT JUSTICE
37 WILL BE SERVED, THE JUDGE SHALL ORDER THAT ALL RECORDS OF THE PERSON'S
38 CONVICTION THAT ARE IN THE CUSTODY OF THE COURT BE SEALED WITH ACCOMPANYING
39 JUSTIFICATION AND SHALL DELIVER A COPY OF THE ORDER TO ALL LAW ENFORCEMENT
40 AGENCIES AND COURTS. THE ORDER SHALL FURTHER REQUIRE THAT ALL LAW
41 ENFORCEMENT AGENCIES AND COURTS NOT RELEASE COPIES OF THE RECORDS TO ANY
42 PERSON EXCEPT ON ORDER OF THE COURT.

1 F. ANY PERSON WHO HAS NOTICE OF THE ORDER AND WHO FAILS TO COMPLY WITH
2 THE COURT ORDER ISSUED PURSUANT TO THIS SECTION IS LIABLE TO THE PERSON FOR
3 DAMAGES RESULTING FROM THE FAILURE.

4 G. UNLESS OTHERWISE PROVIDED BY LAW, A PERSON WHO RECEIVES AN
5 EXPUNGEMENT FOR A CONVICTION PURSUANT TO THIS SECTION MAY RESPOND TO ANY
6 INQUIRY AS THOUGH THE CONVICTION DID NOT EXIST.