



# ARIZONA HOUSE OF REPRESENTATIVES

Fifty-fifth Legislature  
First Regular Session

House: CJR DPA/SE 9-0-0-0 | APPROP DPA/SE 11-2-0-0

## **HB 2320: sealing arrest; liability; sentencing records**

**Now: same subject**

**Sponsor: Representative Toma, LD 22**

**House Engrossed**

### **Overview**

Outlines the process to petition the court to seal the record of a person's arrest, conviction and sentence (Record).

### **History**

On final discharge, a person who has been previously convicted of a felony may file an application to have their civil rights restored (Application) to the superior court. A person who has received an absolute discharge from imprisonment may file an Application no sooner than two years from the date of discharge. The restoration of civil rights is at the discretion of the judicial officer. If the court grants the Application, the court must restore the person's civil rights ([A.R.S. § 13-908](#))

### **Provisions**

1. Allows a person to file a petition to seal all case record related to a criminal offense if the following apply to the person:
  - a) Was convicted of a criminal offense and has completed all terms and conditions of the sentence imposed by the court;
  - b) Charged with a criminal offense and the charge was subsequently dismissed or resulted in a not guilty verdict at a trial; or
  - c) Arrested for a criminal offense and no charges were filed. (Sec. 1)
2. States that a conviction that is sealed may be:
  - a) Alleged as an element of an offense;
  - b) Used as a historical prior felony conviction;
  - c) Admissible for impeachment purposes in a subsequent trial;
  - d) Used to enhance a sentence for a subsequent felony;
  - e) Used to enhance a sentence;
  - f) Pleaded and proved in any subsequent prosecution; and
  - g) Used as a conviction if the conviction would be admissible if the conviction was not sealed. (Sec. 1)
3. States a person must file a petition to seal all case records in one of the following:
  - a) The court in which the person was convicted of an offense;
  - b) The court in which an indictment or citation against the person was filed;
  - c) The court in which the person had an initial appearance if charges were not filed; or
  - d) The superior court in the county where a person was arrested if the person did not have an initial appearance and no charges were filed. (Sec. 1)

Prop 105 (45 votes)     Prop 108 (40 votes)     Emergency (40 votes)     Fiscal Note

4. Prohibits the court from granting or denying a petition to seal a person's record until 30 days after the court receives notice that both the prosecutor and all victims do not object to the petition. (Sec. 1)
5. The court may grant or deny a Petition without a hearing unless the petitioner requests a hearing.
  - a) States that the court can dismiss a Petition that does not meet certain specified requirements without a hearing. (Sec. 1)
6. Requires the clerk of the court to provide a copy of the Petition to the prosecutor. (Sec. 1)
7. Allows a prosecutor to respond to the Petition and request a hearing. (Sec. 1)
8. States that a victim has a right to be present and heard at any proceeding in which the defendant has filed a Petition. (Sec. 1)
9. Requires the court to inform the person in writing of the right to a Petition at the time of sentencing. (Sec. 1)
10. States that a person who was convicted of an offense and has not been convicted of any other offense except misdemeanor traffic offenses, excluding specified driving under the influence violations, may Petition the court after all the terms and conditions of the sentence have been completed and the following period of time has passed since being discharged by the court:
  - a) Ten years for a class 2 or 3 felony;
  - b) Five years for a class 4, 5 or 6 felony;
  - c) Three years for a class 1 misdemeanor; and
  - d) Two years for class 2 or 3 misdemeanor. (Sec. 1)
11. Stipulates that if the person has a prior felony conviction, the person may Petition the court after the following additional lengths of time:
  - a) If the person has one prior felony conviction, an additional five years; and
  - b) If the person has two prior felony convictions, the person may not petition the court until the period of time has passed for each conviction listed above. (Sec. 1)
12. Requires the court, after a Petition is filed, to notify the Department of Public Safety (DPS) and request DPS to prepare and submit a report to the Court that includes all of the petitioner's state and federal arrests, prosecutions and convictions along with any other pertinent information. (Sec. 1)
13. Permits the Director to charge a fee determined by the Director for the investigation unless the petitioner is indigent or has been found not guilty, the case was dismissed or not prosecuted and the petition is filed under a certain specified condition. (Sec. 1)
14. Stipulates that if the court grants a Petition;
  - a) The court must issue an order sealing the Record and direct the clerk of the court (Clerk) to notify DPS, the prosecutor and the arresting law enforcement agency of the sealing order;
  - b) On order of the court, the Clerk must seal all Records;
  - c) DPS must seal and separate the criminal record from DPS's records and inform all appropriate state and federal law enforcement agencies of the sealing;
  - d) The arresting and prosecuting agencies must clearly identify in each agency's files and electronic records that the Record is sealed;
  - e) A person whose record is sealed can state that they have never been arrested for, charged with or convicted of the crime that is the subject of the arrest or conviction, including in response to questions on employment, housing, financial aid or loan applications unless the following apply:

- i. The person is submitting an application that requires a fingerprint clearance card;
  - ii. The sealed conviction is for a drug or drug paraphernalia offense and the person is applying for a job that requires handling or administering prescription drugs;
  - iii. The sealed conviction is for burglary or theft from a residential or nonresidential structure and the person is applying for a job that requires entering and performing services inside of a residential structure;
  - iv. The sealed conviction is for child abuse or aggravated assault and the person is applying for a job involving supervising, educating or administering care to minor;
  - v. The sealed conviction involved vulnerable adult abuse and the person is applying for a job involving supervising or administering care to a vulnerable adult or a person who is at least 65 years of age;
  - vi. The sealed conviction involved a violation of a motor vehicle, boat or airplane and the person is applying for a job involving the commercial or private operation of a motor vehicle, boat or airplane; or
  - vii. The sealed felony conviction for theft, theft of means of schemes and artifices and the person is applying for a job handling another person's finances;
  - viii. The person is applying for a position with a law enforcement agency, a prosecutor's office, a court, a probation department, or the state department of corrections;
  - ix. The person's employer is not liable for hiring or contracting with the person under certain specified conditions; and
  - x. The person's landlord is not liable for leasing property to the person under certain specified conditions.
15. Stipulates that if a person's Record is sealed, the Record must be made available to the following:
- a) The person whose Record is sealed and the person's attorney;
  - b) The victim;
  - c) A law enforcement agency;
  - d) A prosecuting agency;
  - e) A probation department or in the preparation of a pretense report;
  - f) A court for sentencing a person;
  - g) The Department of Corrections; and
  - h) The clerk of the court or any department responsible for maintaining court records. (Sec. 1)
16. States that the supreme court or the court of appeals is not required to seal any Record. (Sec. 1)
17. Stipulates that if the court denies a Petition, a new Petition may not be filed until three years after the date of the denial. (Sec. 1)
18. States that if a conviction for an offense that is committed in another jurisdiction and that if committed in this state would not constitute an offense in this state cannot be used against the petitioner. (Sec. 1)
19. Stipulates that if the petitioner is charged with an offense after filing a Petition and the offense could result in a conviction that cannot be sealed or that could extend the time to file a Petition, the court may not grant or deny the petition until the court disposes of that charge. (Sec. 1)
20. States that the ability to file a Petition does not apply to person who is:
- a) Sentenced as a dangerous offender;
  - b) Convicted of a dangerous crime against children;
  - c) Convicted of a serious offense or violent or aggravated felony;

- d) Convicted of any offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or knowing infliction of serious physical injury on another person;
- e) Convicted of sex trafficking;
- f) Convicted of sexual offenses; and
- g) Sexual exploitation of children. (Sec. 1)

21. States the either of the following are not affected:

- a) The right of the person whose Record is sealed to appeal the conviction or sentence;
- b) The right of a law enforcement agency to maintain an arrest and conviction record and to communicate information regarding the sealed Record to specified agencies to determine the fitness of a person to serve as a peace officer;
- c) The Department of Public Safety or the Board of Fingerprinting from considering a conviction when evaluating an application for a fingerprint clearance card. (Sec. 1)

***Miscellaneous***

22. Adds a Petition to the list of court orders a defendant may appeal. (Sec. 2)

23. Contains an applicability clause. (Sec. 3)

24. Appropriates \$500,000 from the state General Fund in fiscal year 2022 to the Administrative Office of the Courts to pay for the costs of implementing the Petition process. (Sec. 4)

25. Contains a delayed effective date of January 1, 2022. (Sec. 5)