

REFERENCE TITLE: prisoners; forest restoration projects; expungement

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2750

Introduced by
Representatives Cano: Abraham, Andrade, Bolding, DeGrazia, Mathis, Powers
Hannley, Schwiebert

AN ACT

AMENDING TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-912; RELATING TO VACATING A CONVICTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Title 13, chapter 9, Arizona Revised Statutes, is
3 amended by adding section 13-912, to read:

4 13-912. Prisoner forest restoration work expungement; vacated
5 conviction and record expungement; petition
6 procedures; notice; record destruction

7 A. ON RELEASE FROM IMPRISONMENT, A PERSON WHO PARTICIPATED IN A
8 FOREST RESTORATION PROJECT ON LANDS LOCATED WITHIN THIS STATE PURSUANT TO
9 SECTION 37-483, SUBSECTION C, PARAGRAPH 3 WHILE IN THE CUSTODY OF THE
10 STATE DEPARTMENT OF CORRECTIONS MAY PETITION THE COURT THAT PRONOUNCED
11 SENTENCE TO VACATE THE JUDGMENT OF CONVICTION AND EXPUNGE ANY RECORDS
12 RELATED TO THE CONVICTION THAT RESULTED IN THE IMPRISONMENT.
13 NOTWITHSTANDING ANY OTHER LAW, IF THE PERSON IS SERVING A TERM OF PAROLE
14 OR COMMUNITY SUPERVISION AT THE TIME THAT THE PETITION IS FILED, THE COURT
15 MAY TERMINATE THE REMAINDER OF THE PERSON'S TERM OF PAROLE OR COMMUNITY
16 SUPERVISION. THE PERSON, THE PERSON'S ATTORNEY OR THE STATE MAY FILE THE
17 PETITION AS A MOTION IN THE ORIGINAL CASE WITH THE COURT THAT PRONOUNCED
18 SENTENCE.

19 B. THE CLERK OF COURT SHALL MAKE A FORM AVAILABLE TO PETITION THE
20 COURT FOR VACATING THE JUDGMENT OF CONVICTION AND EXPUNGING ANY RECORDS
21 RELATED TO THE CONVICTION. AT A MINIMUM, THE FORM MUST INCLUDE THE
22 PETITIONER'S FULL NAME, DATE OF BIRTH AND CURRENT ADDRESS AND THE
23 CONVICTION THAT THE PETITIONER SEEKS TO HAVE EXPUNGED. A PETITION IS NOT
24 REQUIRED TO HAVE MORE INFORMATION THAN WHAT IS NEEDED FOR THE COURT TO
25 IDENTIFY THE PETITIONER AND THE CASE THAT INVOLVES THE CONVICTION.

26 C. ON RECEIPT OF THE PETITION, THE CLERK SHALL PROVIDE NOTICE OF
27 THE PETITION TO THE COUNTY ATTORNEY AND THE VICTIM, IF ANY. WITHIN THIRTY
28 DAYS AFTER RECEIVING THE NOTICE, THE COUNTY ATTORNEY OR VICTIM, IF ANY,
29 MUST NOTIFY THE COURT OF ANY OBJECTION TO THE PETITION. THE COURT SHALL
30 GRANT THE PETITION IF THE COUNTY ATTORNEY OR VICTIM DOES NOT OBJECT TO THE
31 PETITION AND THE PETITIONER DOES NOT HAVE ANY PENDING CRIMINAL CASES.

32 D. THE COURT SHALL HOLD A HEARING IF THE COUNTY ATTORNEY OR VICTIM
33 FILES A TIMELY OBJECTION TO THE PETITION. THE COURT MUST GRANT THE
34 PETITION UNLESS THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT AN
35 EXPUNGEMENT IS NOT IN THE INTERESTS OF JUSTICE. IN MAKING THIS
36 DETERMINATION, THE COURT MAY CONSIDER ANY OF THE FOLLOWING:

37 1. WHETHER THE PETITIONER HAS PAID THE RESTITUTION THAT WAS ORDERED
38 BY THE COURT FOR EACH CONVICTION, IF APPLICABLE.

39 2. WHETHER THE CIRCUMSTANCES AND THE BEHAVIOR OF THE PETITIONER
40 WARRANT VACATING THE CONVICTION AND EXPUNGING THE RECORD.

41 3. THE AMOUNT OF RISK TO THE PETITIONER'S LIFE AND HEALTH FROM
42 PARTICIPATING IN FOREST RESTORATION PROJECTS AND THE BENEFIT TO THE PUBLIC
43 THAT RESULTED FROM THE PETITIONER'S WILLINGNESS TO ACCEPT THOSE RISKS.

44 4. WHETHER VACATING THE JUDGMENT AND EXPUNGING THE RECORD IS
45 CONSISTENT WITH THE PUBLIC WELFARE AND SAFETY TAKING INTO CONSIDERATION

1 THE PETITIONER'S CRIMINAL HISTORY, THE SERIOUSNESS AND SPECIFIC
2 CIRCUMSTANCES OF THE OFFENSE THAT GAVE RISE TO THE CONVICTION AND ANY
3 EVIDENCE OF THE PETITIONER'S REHABILITATION.

4 E. IF THE COURT DENIES THE PETITION, THE COURT SHALL STATE THE
5 REASONS FOR THE DENIAL IN THE RECORD. IF THE PETITION IS DENIED, THE
6 PERSON MAY FILE ONE ADDITIONAL PETITION AFTER COMPLETING PAROLE OR
7 COMMUNITY SUPERVISION AND PAYING ANY RESTITUTION, IF APPLICABLE. THE
8 PETITIONER MAY APPEAL FROM AN ORDER OR JUDGMENT THAT DENIES A PETITION FOR
9 EXPUNGEMENT FOR A SECOND TIME.

10 F. IF THE PETITION IS GRANTED:

11 1. THE JUDGE SHALL ORDER THAT ALL RECORDS OF THE PERSON'S
12 CONVICTION OR ARREST THAT ARE IN THE CUSTODY OF THE COURT BE SEALED WITH
13 ACCOMPANYING JUSTIFICATION.

14 2. THE COURT SHALL TRANSMIT A COPY OF THE ORDER VACATING THE
15 JUDGMENT OF CONVICTION AND EXPUNGING THE RECORD TO THE DEPARTMENT OF
16 PUBLIC SAFETY, THE ARRESTING AGENCY, THE COUNTY ATTORNEY AND ANY OTHER
17 PERSON OR ENTITY THAT MAY POSSESS A RECORD THAT IS SUBJECT TO
18 EXPUNGEMENT. WITHIN SIXTY DAYS AFTER RECEIVING THE COURT'S ORDER, THE
19 PERSON OR ENTITY SHALL DESTROY ANY RECORD IN THE PERSON'S OR ENTITY'S
20 POSSESSION THAT IS RELATED TO A VACATED OFFENSE. THE PERSON OR ENTITY
21 MUST NOTIFY THE COURT AFTER ALL RECORDS ARE DESTROYED.

22 3. ON A SHOWING OF GOOD CAUSE, THE COURT MAY WAIVE ANY REMAINING
23 FINES OR FEES OR ANY INTEREST THAT IS THE RESULT OF A FINE OR FEE. THIS
24 PARAGRAPH DOES NOT APPLY TO VICTIM RESTITUTION.

25 G. UNLESS OTHERWISE PROVIDED BY LAW, A PERSON WHOSE CONVICTION IS
26 VACATED AND RECORDS EXPUNGED PURSUANT TO THIS SECTION MAY RESPOND TO ANY
27 INQUIRY AS THOUGH THE CONVICTION DID NOT EXIST.

28 H. NOTWITHSTANDING ANY PROVISION OF THIS SECTION, THE CLERK OF THE
29 COURT MAY PRODUCE AN EXPUNGED RECORD IF EITHER OF THE FOLLOWING APPLIES:

30 1. THE PETITIONER SUBMITS A WRITTEN REQUEST TO THE CLERK OF THE
31 COURT FOR AN EXPUNGED RECORD TO COMPLY WITH A FEDERAL LAW.

32 2. THE CLERK OF THE COURT RECEIVES A SUBPOENA FROM A PARTY IN A
33 CIVIL ACTION THAT WAS COMMENCED BY THE PETITIONER AND THE EXPUNGED RECORD
34 IS EVIDENCE IN THE MATTER.