

Restoration of Civil Rights

Helping People regain their
Civil Liberties

Consequences of a Felony

- **Food Stamps and social security benefits:** People convicted of a felony for possession or sell of controlled substance losses their ability to obtain food stamps and social security benefits.
- **Educational Assistance:** A person who is convicted of a felony drug offense and was receiving educational grants and loans is barred from further assistance.

Consequences of a Felony

- **Housing:** Depending on the offense and the city in which the person lives they may lose their public housing for a short period of time or indefinitely.
- **Civil Penalties:** A person may not vote, serve on a jury, obtain commercial driver's licenses, possess a gun or join the US armed forces.

Consequences of a Felony

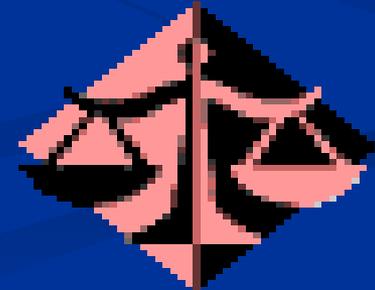
- **Military service:** A person may be able to join the armed forces if they have their record expunged, charges dismissed or receive a pardon.
- **Family issues:** Felony convictions may affect a person's marital status, child custody rights and parental status.

Consequences of a Felony

- **Child Custody:** Felony convictions may be used to argue against joint custody in a child custody case.
- **State employment or licenses:** A person may be denied employment by the state or be denied a license, permit or certificate to engage in professions

Restoration of Rights in AZ

- Arizona Courts can only restore those rights which the state of Arizona suspended.
 - Exception: Federal Civil Liberties
 - A person with a federal felony conviction may apply to have their civil liberties restored in the county in which they currently reside.



There are two potential actions a person may be requesting:

- Restoration of Civil Liberties (13-904)
- Setting Aside Judgment of Guilt (13-907)

Restoration

- Restoration of Civil Liberties (13-904)
 - Right to Vote
 - Right to hold public office of trust or profit
 - Right to serve as a juror
 - May also affect ones ability to obtain business and professional licenses



Setting Aside Judgment of Guilt

- Setting aside a judgment releases the citizen from all penalties and disabilities resulting from the conviction.

Setting Aside Judgment

- Does not seal or expunge ones record
- The record is still accessible to the public. However, the record will have a denotation stating that the judgment has been set aside
- Some employers are more likely to view the setting aside of a judgment favorably. The setting aside of a judgment lets the employer know that the court is satisfied that the person has been rehabilitated

Offenses Not Eligible for Setting Aside Judgment

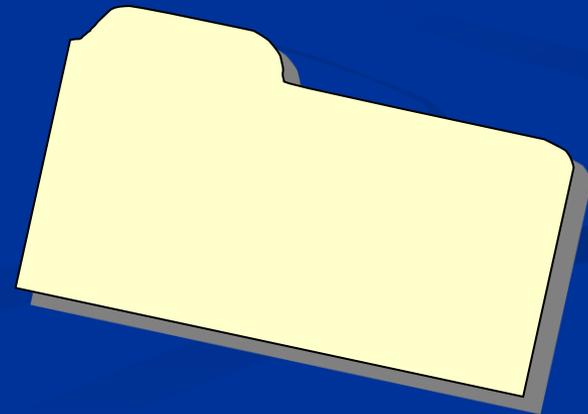
- Infliction of serious physical injury
- Use or exhibition of deadly weapon or dangerous instrument
- Required to register
- Finding of sexual motivation
- Victim is under 15

Setting Aside Judgment

- Does not apply to DMV records
- Does not apply to Game and Fish Licenses
- *Set aside conviction may be used at a subsequent trial*

Setting Aside Judgment

- A person may apply to have their judgment set aside upon completion of probation, parole or prison sentence. The person does not have to wait two years from Absolute Discharge to apply. This application may be submitted by the person's probation officer.



Federal Convictions

A person with Federal Convictions:

- May not apply to have their conviction set aside
- May only apply to restore their civil rights

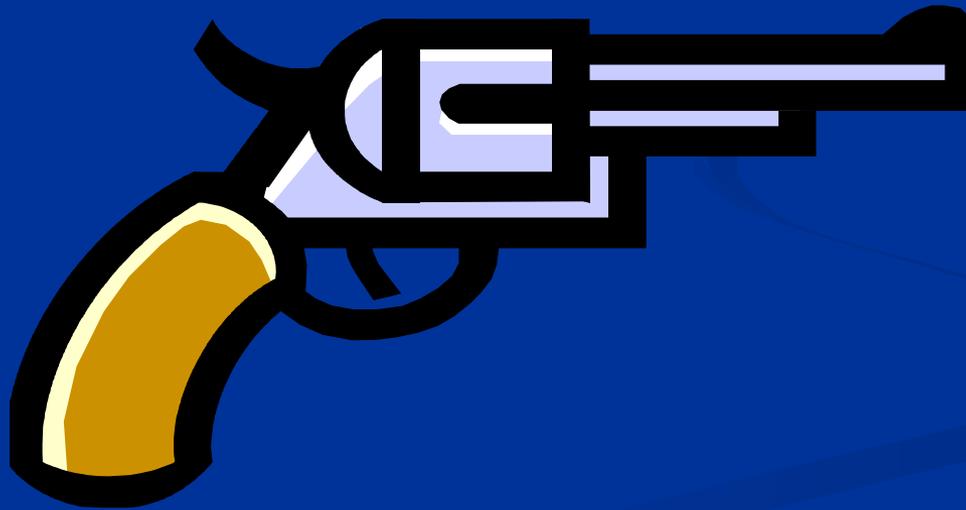


First Felony Conviction Automatic

A person, whose civil rights were lost or suspended as a result of one felony conviction, had their rights automatically restored upon completion of a term of probation or receipt of an absolute discharge from imprisonment if the person has paid all fines or restitution that was imposed. (13-912)

First Felony

Gun Rights are **not** automatically restored.



First Felony

- Person should file a motion to restore civil liberties and set aside judgment.
 - Why?
 - The court does automatically send a list to the elections office of those individuals with one felony who are eligible to vote, however the elections office does not always receive a complete list.
 - A motion is required to set aside judgment.

Two or more Felonies

- A person who has been convicted of two or more felonies must apply to the court to have his/her rights restored and their judgment set aside.
 - After completion of probation and payment of fines and restitution
- or
- Two years from absolute discharge from Department of Corrections

Federal Conviction

■ Probation

- Release from Probation

- Copies of

- Indictment or Complaint

- Plea Agreement

- Sentencing

- Discharge

- Proof of notification to the Federal prosecuting attorney

Federal Conviction

■ Prison

- Two Years from Date of Discharge
- Absolute Discharge
- Indictment or Complaint
- Plea Agreement
- Sentencing
- Proof of notification to the Federal prosecuting attorney

Adult Probation for Minors

- 13-921 Juveniles who were convicted in criminal court may apply to have their record expunged if:
 - The person was under 18 when the offense was committed
 - The conviction is a felony
 - The person is not sentenced to a prison term
 - The person does not have a prior historical felony

Adult Probation for Minors

- The conviction may be used at a subsequent hearing
- The conviction can be proven as a prior historical conviction
- The conviction can be used to restrict or refuse a driver's license

Adjudicated Delinquent or Incorrigible

- If the person was adjudicated delinquent of a felony, the person retains all civil rights except the right to possess a gun or firearm unless the judge restored that right when he/she was discharged from probation.



Adjudicated Offenses

- An adult who has a juvenile record may apply to have it destroyed. However the length of time the adult must wait before applying to have the juvenile record destroyed depends upon the adjudicated offense. For less serious offenses the person may apply after obtaining 18, otherwise the person must wait until 25.

Adjudicated Offenses

- May apply at 18
 - Misdemeanors
 - Non 13-501 offenses
 - Non DUI offenses
 - Successfully completed probation
 - Paid all fines and restitution
 - No criminal complaints pending
 - No criminal felony convictions

Adjudicated Offenses

- May apply at 25
 - 13-501 Offenses
 - DUI
 - No criminal felony convictions
 - No charges pending
 - Successfully discharged
 - Paid on fines or restitution

The Process

1. Was the person convicted in Arizona or the Federal system?

- Persons must apply to restore their rights in the state they were convicted
- Exception – Federal Convictions

2. Does the person have a copy of their criminal history or absolute discharge?

- A person may obtain a copy of their criminal history on line. However, the criminal history only dates back to the late 1990's or early 2000's.

The Process

3. Did the person complete the terms of probation?

- If the person was released from probation without completing the terms of probation the court is not likely to restore the individuals rights or set aside judgment.

4. Does the person still owe fines or restitution?

- All fines and restitution must be paid before the court will restore rights or set aside.

The Process

5. **Does the person know the date and agency of their arrest?**
 - This information is not located on the Clerk of the Court's website. The petition to restore requires this information and the court clerk will not accept a petition without it.
6. **Does the person have a Motion to Restore Rights for every CR number?**
 - A separate application must be filled out for each different criminal case, different CR number, and filed in the proper court. If the person was found guilty of more than one crime on the same CR number, each crime must be listed separately on the same petition.

The Process

7. **Verify that the form is filled out in its entirety.**
 - Including name, address and telephone number.
8. **Make a copy of the Motion and all accompanying documents.**

The Process

9. File the motion at the appropriate court house

- Convictions in Superior Court may be filed at any Maricopa County Court House
- Convictions in the city or Justice of the Peace Courts must be filed in the court where the conviction occurred.

The Process

■ The Granting of the Application

- The court will grant or deny the request in approximately 90 days. The court will send the person an order stating what action the court took regarding the application.

■ The Application is denied

- Persons may ask the court to reconsider their request. If the person was just released from probation the judge may want to see a period of good behavior before restoring rights or setting aside judgment

Misdemeanor Designation

- A person with a class six open felony may request the court reduce the conviction to a misdemeanor.
 - If the person entered into a plea, the plea agreement may require the person to successfully complete court ordered penalties before the offense may be designated.

Eligible for a Misdemeanor Designation

- Must be a Class 6 OPEN felony – not designated at sentencing
- Prior to admitting/ being found guilty of the Class 6, the person had not been convicted of two or more felony offenses
- Offense did not involve the intentional or knowing infliction of serious physical injury
- Offense did not involve the discharge or use of a dangerous instrument or deadly weapon.

Questions?