

Overcoming Your Past

What can you do about my prior criminal conviction?

What this presentation covers

- The collateral consequences of criminal convictions
- The difference between felonies and misdemeanors
- What options do you have to make things better
- How best to help your attorney
- Links to free resources

In 2016 an estimated 6.1 million people in the United States (2.5% of the nation's voting age population, excluding DC) could not vote due to a felony conviction – an increase of 4.2% from the 2010 total of 5.85 million and the highest number since at least 1960.

See: "Number of People Who Cannot Vote Due to a Felony Conviction" available at: <https://felonvoting.procon.org/number-of-people-by-state-who-cannot-vote-due-to-a-felony-conviction/>

Types of Convictions

Felonies
Misdemeanors
Traffic Offenses

What is a misdemeanor?

A misdemeanor is a crime punishable by less than one year in jail or by fine.

What is a misdemeanor?

Disorderly
Conduct

Disturbing
the Peace

Simple Theft

Trespassing

Public
Intoxication

Indecent
Exposure

Shop Lifting

Driving on a
Suspended
License

What is a felony?

A felony is a serious crime punishable by at least 1 or more years of jail.

Examples of Felonies

Rape

Murder

Robbery

Drug
Trafficking

Human
Trafficking

Assault

Kidnapping

Child Abuse

Felon in
Possession
of a Gun

Felonies vs. Misdemeanors

- All felonies have long lasting consequences
- Only very few misdemeanors impact individual rights.

- Example: Misdemeanor Domestic Violence Assault and Battery will result in a loss of the right to bear arms INDEFINATELY

How Felonies affect ex-offenders

Rights Lost

- Voting
- The ability to serve on a jury
- Gun possession and ownership
- Depending on crime, other rights may be lost

Other Consequences

- Fingerprint Clearance Cards
- Ineligible for certain professional licenses
- Housing
- Loss of certain public benefits

Options Available for Relief in Arizona

- Restoration of Civil Rights (felony only)
- Set Aside (applies to misdemeanor and felony offenses)
- Expungements (marijuana related offenses only)
- Commutation of Sentence
- Pardon (only available where special circumstances exist)
- Federal cases do not have the same remedies

Restoration of Civil Rights

- Restoration of Civil Rights only applies to felony convictions
- Process varies depending on the state of conviction
- First time felony = Automatic Restoration in AZ EXCEPT gun rights
- Federal ex-felons can apply for restoration of civil rights under state law
- If you have a federal conviction, you cannot restore your gun rights under state law
- If you have two or more felonies in AZ, you must apply to the courts for restoration of rights

Restoration of Firearm Rights

- Arizona Revised Statutes require: If the person was convicted of an offense which would be a dangerous offense under section 13-704, the person may not file for the restoration of the right to possess or carry a firearm. If the person was convicted of an offense which would be a serious offense as defined in section 13-706, the person may not file for the restoration of the right to possess or carry a firearm for ten (10) years from the date of the person's absolute discharge from imprisonment or discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of the right to possess or carry a firearm for two (2) years from the date of the person's absolute discharge from imprisonment or discharge from probation.

Set Aside Conviction

- 13-905. Setting aside judgment of convicted person on discharge; application; release from disabilities; firearm possession; exceptions
- A. Except as provided in subsection K of this section, every person convicted of a criminal offense, on fulfillment of the conditions of probation or sentence and discharge by the court, may apply to the court to have the judgment of guilt set aside. The convicted person shall be informed of this right at the time of sentencing.

Is Set Aside is Appropriate?

- 1. The nature and circumstances of the offense that the conviction is based on.
- 2. The applicant's compliance with the conditions of probation, the sentence imposed and any state department of corrections' rules or regulations, if applicable.
- 3. Any prior or subsequent convictions.
- 4. The victim's input and the status of victim restitution, if any.
- 5. The length of time that has elapsed since the completion of the applicant's sentence.
- 6. The applicant's age at the time of the conviction.
- 7. Any other factor that is relevant to the application.

Convictions Not Eligible for Set Aside

- 1. A dangerous offense.
- 2. An offense for which the person is required or ordered by the court to register pursuant to section 13-3821.
- 3. An offense for which there has been a finding of sexual motivation pursuant to section 13-118.
- 4. A felony offense in which the victim is a minor under fifteen years of age.
- 5. An offense in violation of section 28-3473, any local ordinance relating to stopping, standing or operation of a vehicle or title 28, chapter 3, except a violation of section 28-693 or any local ordinance relating to the same subject matter as section 28-693.

- *** No gun rights restored for conviction of Domestic Violence

Expungements

- AZ – Only applicable to marijuana related offenses
- Who is eligible:
 - Those who were convicted or charged with possessing, consuming, or transporting **2.5 ounces of marijuana** or less.
 - Those who were convicted or charged with possessing, transporting, cultivating, or processing no more than **six marijuana plants** at their primary residence for personal use.
 - Those who were convicted or charged with possessing, using, or transporting **paraphernalia** relating to the cultivation, manufacture, processing, or consumption of marijuana.

Commutation of Sentence

- A commutation is a shortening of a sentence or set of consecutive sentences. For those committing offenses after January 01, 1994, Arizona law provides that the Arizona Board of Executive Clemency "*may make recommendations to the governor for commutation of sentence after finding by clear and convincing evidence that the sentence imposed is clearly excessive given the nature of the offense and the record of the offender and that there is a substantial probability that when released the offender will conform the offender's conduct to the requirements of the law (A.R.S. 31-402).*" If the majority of the Board votes favorably, then a recommendation for commutation is made to the Governor. [...] There is no appeal to a denial of a commutation of sentence at any stage of the process, and neither the Governor nor the Board is legally required to provide a reason for denial of a recommended commutation. (See, <https://boec.az.gov/helpful-information/frequently-asked-questions>.)

Pardon by Governor

- An Arizona Governor's pardon is the ultimate relief from the penalties and disabilities associated with a criminal conviction. Obtaining a pardon is a distinct achievement and the applicant should demonstrate to the Board of Executive Clemency that they have earned the Governor's consideration. You will be asked to explain why you are seeking a pardon. It should be more than simply stating that you want to "clear your record." NOTE: You do not need a Governor's pardon to reclaim your right to vote or obtain gun rights. Your rights MAY BE restored after successfully completing your sentence and applying to the Sentencing Court for a "Restoration of Civil Rights." To obtain further information or forms, contact or visit the website of the Superior Court's Clerk of the Court within the county of your conviction. (See, <https://boec.az.gov/helpful-information/frequently-asked-questions>.)

What if I have a Federal Conviction?

- There is no mechanism to "set aside" a conviction or restore rights lost after a felony conviction in federal court
- Persons with federal convictions can apply to the state for restoration of most rights
- State courts cannot restore the right to bear arms

How Can I Prepare for Relief

- Gather all available court information and history of your case(s)
- Obtain character references/letters
- Gather criminal history and be able to address prior convictions
- If possible, pay outstanding fines in other traffic and civil matters
- Write a statement on why you deserve relief, how it will help you, and explain how you have changed and the steps you have taken to improve your life and others around you
- Gather certificates of completion for any training, education, or treatment completed since the imposition of sentencing
- Bring all this information to your meeting with an attorney

Resources

Legal Aid

- Pima County Public Defender Civil Rights Restoration Clinic: 520-724-2285.
- Application to Set Aside and Restore Civil Rights in Pima County: <https://www.sc.pima.gov/Default.aspx?tabid=348>
- Application to Set Aside and Restore Civil Rights in Maricopa County: <https://www.clerkofcourt.maricopa.gov/forms>

Other Resources

- Federal Bonding Program: <https://bonds4jobs.com/>
- Old Pueblo Community Services: <https://helptucson.org/service/>
- Grants for Ex-Felons in Arizona
Grants offer assistance with necessities such as job training and housing and, unlike loans, do not require repayment. [https://pocketsense.com/grants-
exfelons-arizona-7439503.html](https://pocketsense.com/grants-exfelons-arizona-7439503.html)