

# Sealing Records; Reading DPS Records; Expungements; Set Asides and Second Chances

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September 6, 2023

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## Outline

- Introduction
- Offenses Excluded
- Included
- Consequences
- When May Apply
- Where to Apply
- Burden of Proof
- Hearing Required
- Appeals
- Evictions



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## Sentencing After January 1

- With plea:
  - 1. Right to file a petition for post-conviction relief and petition for review pursuant to Criminal Rule 33
  - 2. Following completion of sentence, right to file a petition to set aside and may also qualify for a certificate of second chance pursuant to ARS 13-905
  - 3. 3 years (class 1; or 2 years for class 2 or 3; **after the statutory wait period**) following completion of all terms of sentence, may file a petition to seal pursuant to Criminal Rule 36.1

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## Sentencing After January 1

- After trial:
  - 1. Right to an appeal within 14 days pursuant to Criminal Rule 31
  - 2. Right to file a petition for post-conviction relief and petition for review pursuant to Criminal Rule 32
  - 3. Following completion of sentence, right to file a petition to set aside and may also qualify for a certificate of second chance pursuant to ARS 13-905
  - 4. 3 years (class 1; or 2 years class 2 or 3 **after the statutory wait period**) following completion of all terms of sentence, right to file a petition to seal pursuant to Criminal Rule 36.1

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## Petitions for Post-Conviction Relief

- PCR now Rule 33 for Guilty Plea; 32 for trial
- Preferably trial judge.
- Painful. Read it. Every time.
- Can also withdraw a guilty plea per Rule 17.5
- Remember, for appeal, trial judge cannot rule on Motion to Continue Appellate Brief

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## The “Grid”

	Set Aside	Certificate of Second Chance	Expungement	Sealing
References	§13-905 Rule 29	§13-905 Rule 29.7 SB 1036	§36-2862 Rule 36	§13-911 Rule 36.1 SB 1582

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## Offenses Excluded: Set Aside

- §13-905(N):
  - 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.

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## Offenses Excluded: Second Chance

- (After 10/29/23:)
- SB 1036:
- §13-905(L):
  - May not receive if previously received a certificate for a felony.
- (Unlimited certificates for misdemeanors.)

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## Offenses Excluded: Expungement

- Excludes all except:
- §36-2862(A):
  - 1. Possessing, consuming, or transporting 2.5 ounces or less of marijuana, of which not more than 12.5 grams was in the form of marijuana concentrate;
  - 2. Possessing, transporting, cultivating, or processing not more than 6 marijuana plants at your primary residence for personal use; or
  - 3. Possessing, using, or transporting paraphernalia related to the cultivation, manufacture, processing, or consumption of marijuana.

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## Offenses Excluded: Sealing

- §13-911(O):
  - 1. Sentenced as a dangerous offender per §13-704.
  - 2. Convicted of a dangerous crime against children per §13-705.
  - 3. Convicted of a serious offense or violent or aggravated felony per §13-706.
  - 4. Convicted of any offense that has either of the following as an element of the offense:
    - (a) The discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
    - (b) The knowing infliction of serious physical injury on another person.

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## Includes

	Set Aside	Certificate of Second Chance	Expungement	Sealing
<b>Conviction</b>	§13-905(D): Yes	§13-905(D): Yes	§36-2862(C): Yes	§13-911(A): Yes
<b>Dismissals</b>	N/A	N/A	§36-2862(C): Yes	§13-911(A): Yes <i>Issue: when may apply?</i>
<b>Arrest</b>	N/A	N/A	§36-2862(C): Yes	§13-911(A): Yes <i>Issue: when may apply?</i>

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## Consequences: Priors

	Set Aside	Certificate of Second Chance	Expungement
<b>Consequences Priors</b>	§13-905(E)(3): May still be used		§36-2862(D): May not be used as prior

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## Consequences: Priors: Sealing

- §13-911(B): May be:
  - 1. Alleged as an element of an offense.
  - 2. Used as a historical prior felony conviction.
  - 3. Admissible for impeaching any party or witness in a subsequent trial.
  - 4. Used to enhance the sentence for a subsequent felony.
  - 5. Used to enhance the sentence pursuant to sections 28-1381 and 28-1382.
  - 6. Pleaded and proved in any subsequent prosecution of the person by this state or a political subdivision of this state.
  - 7. Used as a conviction if the conviction would be admissible if the conviction was not sealed.

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## Consequences: Employers

	Set Aside	Certificate of Second Chance	Expungement
Consequences Employers		§13-905(K)(2): Provides an employer of the person with all of the protections that are provided pursuant to §12-558.03.	§36-2862(E): May state has never been arrested for, charged with, adjudicated or convicted of, or sentenced for the crime that is expunged

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# Consequences: Employers: Sealing

- **Careful about advising!** §13-911(l)(5):
- May state, in all instances, has never been arrested for, charged with or convicted of the crime that is sealed, including in response to questions on employment, housing, financial aid or loan applications unless any of the following applies:
  - a. Applying for job that requires fingerprint
  - b. Violation of Title 34 (drugs)
  - c. Burglary or theft from residential and applying for job inside a residence
  - d. Child abuse or aggravated assault and the person is applying for a job involving supervising, educating or administering care to a minor.
  - e. 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 old
  - f. DUI or OUI and applying for CDL
  - g. Theft and applying for job handling money
  - h. Applying for law enforcement
  - i. DCS child custody
  - j. Disclosure required by state or federal law
  - k. The disclosure is required to comply with program integrity provisions of medicare, medicaid or any other federal health care program.

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# Consequences: MVD

	Set Aside	Certificate of Second Chance	Expungement	Sealing
<b>Consequences MVD</b>	§13-905(D): May still be used to enforce §§28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312 or 28-3319			

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## Consequences: Civil Rights

	Set Aside	Certificate of Second Chance	Expungement	Sealing
<b>Consequences Civil Rights</b>	Civil rights and firearms are suspended on conviction of a felony and not a misdemeanor, so the set aside of a misdemeanor will not have any impact.	N/A	§36-2862(C): Civil rights, including the right to possess firearms, are restored, unless the petitioner is otherwise not eligible for the restoration of civil rights on grounds other than a conviction for an offense set forth in subsection A	Firearms: Does not affect right to possess a firearm if the conviction prohibits from possessing a firearm under Arizona or other state and federal laws. (28 CFR § 25.9)

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## Consequences: Fingerprint Clearance

	Set Aside	Certificate of Second Chance	Expungement	Sealing
<b>Consequences Fingerprint</b>	§13-905(G)(2): May still be considered	§13-905(K)(1): Releases the person from all barriers and disabilities in obtaining an occupational license issued under title 32 that resulted from the conviction if the person is otherwise qualified.		§13-911(P)(3): May still be considered

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## Consequences: Other

	Set Aside	Certificate of Second Chance	Expungement	Sealing
Consequences Other	<p>(After 10/29/23:)</p> <p>SB 1582: §13-719(F): Does not affect lifetime injunction.</p> <p>§13-905(D): Game and Fish penalties in §§17-314; 17-340 remain</p>	<p>§13-905(K)(3): Provides another person or an entity that provides housing with all of the protections limiting the introduction of evidence that are provided to an employer pursuant to §12-558.03(B)</p>	<p>§36-2862(C): All records sealed.</p>	<p>(After 10/29/23:)</p> <p>SB 1582: §13-719(F): Does not affect lifetime injunction.</p>

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## When May Apply

	Set Aside	Certificate of Second Chance	Expungement
When may apply	<p>Rule 29.1: Completed probation or sentence</p>	<p>(After 10/29/23:)</p> <p>SB 1036: §13-905(K and L): Should be included in petition to set aside. If set aside granted, the court's order must include a certificate of second chance if convicted of a misdemeanor, unless has previously received a certificate for a felony.</p> <p>If previously set aside w/o certificate, may apply for cert when meets qualifications.</p>	<p>Does not have to complete sentence!</p> <p>Note that this applies to acts committed Before July 12, 2021. The acts that can be expunged are no longer a crime as of that date and new charges should not be filed.</p>

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## When May Apply: Sealing

- Rule 36.1(b):
- Found not guilty or charges dismissed; Arrested but no charges filed;
- Apply no sooner than 3 years for class 1; 2 years for class 2 or 3; after completion of all terms of sentence and probation
- (Issue: Petty offenses?)
- Must wait another 5 years if has a prior felony conviction;
- Must wait 3 years after denial.
- §13-911(N):
- If gets new criminal charge while pending petition, must wait until conclusion
- §13-911(G): person convicted of 2+ offenses may not petition until the time has passed for each/all convictions.

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## Where to Apply

	Set Aside	Certificate of Second Chance	Expungement
Where to apply	Rule 29.2: Court that sentenced petitioner	Rule 29.2: Court that sentenced petitioner	Rule 36(a)(4): If charged with the offense, must be filed in the court where the complaint or citation was concluded. If case commenced in a justice court and was transferred to a superior court, must be filed in superior court. If arrested but never charged, must be filed in the superior court in the county where the arrest occurred.

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## Where to Apply: Sealing

- Rule 36.1(c)(3):
- (A) If convicted, must be filed in the court in where convicted.
- (B) If an indictment, information, citation, or complaint was filed and all charges were dismissed, the person was found not guilty on all charges, or the person's conviction was vacated, the petition must be filed in the court where filed, except that if the case commenced in a justice court and was transferred to a superior court, must be filed in the superior court.
- (C) If an initial appearance but no charges were filed, must be filed in the court where the initial appearance was held.
- (D) If arrested, did not have an initial appearance, and no charges were filed, must be filed in the superior court in the county where the arrest occurred.

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## Burden of Proof

	Set Aside	Certificate of Second Chance
Burden Of Proof	Rule 29.6 and §13-905(C): Must consider the following factors: (1) the nature and circumstances of the offense; (2) the applicant's compliance with the conditions of probation, the sentence imposed, (3) any earlier or later convictions; (4) the victim's input and the status of victim restitution, if any; (5) the time that has elapsed since the completion of the applicant's sentence; (6) the applicant's age at the time of conviction; and (7) any other relevant factor. * Issue: do we have all the necessary info?	(After 10/29/23): SB 1036: §13-905(K and L): If set aside granted, the court's order must include a certificate of second chance if convicted of a misdemeanor, unless has previously received a certificate for a felony.

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## Burden of Proof

	Expungement	Sealing
Burden Of Proof	<p>Rule 36(d)(3): Must grant petition unless state establishes by clear and convincing evidence that the offense is not eligible for expungement or if the court finds that the offense identified in the petition is not eligible for expungement.</p>	<p>Rule 36.1(f): Must grant the petition if it determines that granting the petition is in the best interests of the petitioner and the public's safety, except 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 to seal case records, the court may not grant or deny the petition until the court disposes of that charge.</p>

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## Denials/Dismissals/Refiles

	Set Aside	Certificate of Second Chance	Expungement	Sealing
Denials/Dismissals/Refiles	<p>Rule 29.6(b) and §13-905(l): Denials must be on the record and in writing.</p> <p>29.6(c) allows a defendant to refile if denied after satisfying all requirements or resolving any other reasons for the denial.</p>			<p>Note: a denial prevents defendant from repetition for 3 years but a dismissal (eg, too soon) has no such impact. Rule 36.1(f).</p>

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## Appeals?

	Set Aside	Certificate of Second Chance	Expungement	Sealing
Appeal allowed?	Yes. §13-4033		§36-2862(F): Yes	Partial. Rule 36.1(h): An appeal from an order denying a petition may be taken only when the basis of the appeal is the defendant's eligibility to petition the court. §13-4033(A)(5)

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## Evictions

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## Sealing Eviction Records

- Eviction Rule 20:
- When court enters an order that dismisses an action for eviction prior to entry of a judgment or that enters judgment in favor of a tenant, it is required to issue an order sealing all records related to the case.
- Applies to all records relating to an action for summary eviction, a forcible entry and detainer action, or a special detainer action that are maintained by the court.
- Applies to a tenant whose case is dismissed or in which judgment is entered in the tenant's favor on or after **9-24-22**.

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## Eviction Motions to Satisfy

- Effective **January 1, 2023**
- Eviction Rule 4d requires landlords to file a Satisfaction within 30 days of payment and it will remove the requirement that the tenant show reasonable diligence to find the plaintiff.

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**Set Asides, Second Chances, Expungements, Sealing**

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>References</b>	§13-905 Rule 29	§13-905 Rule 29.7 SB 1036	§36-2862 Rule 36	§13-911 Rule 36.1 SB 1582

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Excludes</b>	<p>§13-905(N):</p> <ol style="list-style-type: none"> <li>1. A dangerous offense.</li> <li>2. An offense for which the person is required or ordered by the court to register pursuant to section §13-3821.</li> <li>3. An offense for which there has been a finding of sexual motivation pursuant to section §13-118.</li> <li>4) A felony offense in which the victim is a minor under fifteen years of age.</li> </ol>	<p>(After 10/29/23: SB 1036: §13-905(L):</p> <p>May not receive if previously received a certificate for a felony. (Unlimited certificates for misdemeanors.)</p>	<p>Excludes all except:</p> <p>§36-2862(A):</p> <ol style="list-style-type: none"> <li>1. Possessing, consuming, or transporting 2.5 ounces or less of marijuana, of which not more than 12.5 grams was in the form of marijuana concentrate;</li> <li>2. Possessing, transporting, cultivating, or processing not more than 6 marijuana plants at your primary residence for personal use; or</li> <li>3. Possessing, using, or transporting paraphernalia related to the cultivation, manufacture, processing, or consumption of marijuana.</li> </ol>	<p>§13-911(O):</p> <ol style="list-style-type: none"> <li>1. Sentenced as a dangerous offender per §13-704.</li> <li>2. Convicted of a dangerous crime against children per §13-705.</li> <li>3. Convicted of a serious offense or violent or aggravated felony per §13-706.</li> <li>4. Convicted of any offense that has either of the following as an element of the offense:               <ol style="list-style-type: none"> <li>(a) The discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.</li> <li>(b) The knowing infliction of serious physical injury on another person.</li> </ol> </li> </ol>



**Set Asides, Second Chances, Expungements, Sealing**

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Includes</b>				
Conviction	§13-905(D): Yes	§13-905(D): Yes	§36-2862(C): Yes	§13-911(A): Yes
Dismissals	N/A	N/A	§36-2862(C): Yes	§13-911(A): Yes <a href="#">Issue: when may apply?</a>
Arrest	N/A	N/A	§36-2862(C): Yes	§13-911(A): Yes <a href="#">Issue: when may apply?</a>

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Consequences</b> Priors	§13-905(E)(3): May still be used		§36-2862(D): May not be used as prior	§13-911(B): May be: 1. Alleged as an element of an offense. 2. Used as a historical prior felony conviction. 3. Admissible for impeaching any party or witness in a subsequent trial. 4. Used to enhance the sentence for a subsequent felony. 5. Used to enhance the sentence pursuant to sections 28-1381 and 28-1382. 6. Pleaded and proved in any subsequent prosecution of the person by this state or a political subdivision of this state. 7. Used as a conviction if the conviction would be admissible if the conviction was not sealed.

**Set Asides, Second Chances, Expungements, Sealing**

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Consequences Employers</b>		§13-905(K)(2): Provides an employer of the person with all of the protections that are provided pursuant to §12-558.03.	§36-2862(E): May state has never been arrested for, charged with, adjudicated or convicted of, or sentenced for the crime that is expunged	<p>Careful about advising!</p> <p>§13-911(I)(5): May state, in all instances, has never been arrested for, charged with or convicted of the crime that is sealed, including in response to questions on employment, housing, financial aid or loan applications unless any of the following applies:</p> <ul style="list-style-type: none"> <li>a. Applying for job that requires fingerprint</li> <li>b. Violation of Title 34 (drugs)</li> <li>c. Burglary or theft from residential and applying for job inside a residence</li> <li>d. Child abuse or aggravated assault and the person is applying for a job involving supervising, educating or administering care to a minor.</li> <li>e. 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 old</li> <li>f. DUI or OUI and applying for CDL</li> <li>g. Theft and applying for job handling money</li> <li>h. Applying for law enforcement</li> <li>i. DCS child custody</li> <li>j. Disclosure required by state or federal law</li> <li>k. The disclosure is required to comply with program integrity provisions of medicare, medicaid or any other federal health care program.</li> </ul>

**Set Asides, Second Chances, Expungements, Sealing**

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Consequences</b> MVD	§13-905(D): May still be used to enforce §§28-3304, 28-3305, 28-3306, 28-3307, 28-3308, 28-3312 or 28-3319			

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Consequences</b> Civil Rights	Civil rights and firearms are suspended on conviction of a felony and not a misdemeanor, so the set aside of a misdemeanor will not have any impact.	N/A	§36-2862(C): Civil rights, including the right to possess firearms, are restored, unless the petitioner is otherwise not eligible for the restoration of civil rights on grounds other than a conviction for an offense set forth in subsection A	Firearms: Does not affect right to possess a firearm if the conviction prohibits from possessing a firearm under Arizona or other state and federal laws. (28 CFR § 25.9)

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Consequences</b> Fingerprint	§13-905(G)(2): May still be considered	§13-905(K)(1): Releases the person from all barriers and disabilities in obtaining an occupational license issued under title 32 that resulted from the conviction if the person is otherwise qualified.		§13-911(P)(3): May still be considered

## Set Asides, Second Chances, Expungements, Sealing

	Set Aside	Certificate of Second Chance	Expungement (Marijuana)	Sealing
<b>Consequences</b> Other	(After 10/29/23:) SB 1582: §13-719(F): Does not affect lifetime injunction.  §13-905(D): Game and Fish penalties in §§17-314; 17-340 remain	§13-905(K)(3): Provides another person or an entity that provides housing with all of the protections limiting the introduction of evidence that are provided to an employer pursuant to §12-558.03(B)	§36-2862(C): All records sealed.	(After 10/29/23:) SB 1582: §13-719(F): Does not affect lifetime injunction.

	Set Aside	Certificate of Second Chance	Expungement (Marijuana)	Sealing
<b>When may apply</b>	Rule 29.1: Completed probation or sentence	(After 10/29/23:) SB 1036: §13-905(K and L): Should be included in petition to set aside. If set aside granted, the court's order must include a certificate of second chance if convicted of a misdemeanor, unless has previously received a certificate for a felony.  If previously set aside w/o certificate, may apply for cert when meets qualifications.	Does not have to complete sentence!  Note that this applies to acts committed Before July 12, 2021. The acts that can be expunged are no longer a crime as of that date and new charges should not be filed.	Rule 36.1(b): Found not guilty or charges dismissed; Arrested but no charges filed; Apply no sooner than 3 years for class 1; 2 years for class 2 or 3; after completion of all terms of sentence and probation (Issue: Petty offenses?) Must wait another 5 years if has a prior felony conviction; Must wait 3 years after denial.  §13-911(N): If gets new criminal charge while pending petition, must wait until conclusion.  §13-911(G): person convicted of 2+ offenses may not petition until the time has passed for each/all convictions.

**Set Asides, Second Chances, Expungements, Sealing**

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Where to apply</b>	Rule 29.2: Court that sentenced petitioner	Rule 29.2: Court that sentenced petitioner	Rule 36(a)(4): If charged with the offense, must be filed in the court where the complaint or citation was concluded. If case commenced in a justice court and was transferred to a superior court, must be filed in superior court. If arrested but never charged, must be filed in the superior court in the county where the arrest occurred.	Rule 36.1(c)(3): (A) If convicted, must be filed in the court in where convicted. (B) If an indictment, information, citation, or complaint was filed and all charges were dismissed, the person was found not guilty on all charges, or the person's conviction was vacated, the petition must be filed in the court where filed, except that if the case commenced in a justice court and was transferred to a superior court, must be filed in the superior court. (C) If an initial appearance but no charges were filed, must be filed in the court where the initial appearance was held. (D) If arrested, did not have an initial appearance, and no charges were filed, must be filed in the superior court in the county where the arrest occurred.

**Set Asides, Second Chances, Expungements, Sealing**

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Burden Of Proof</b>	<p>Rule 29.6 and §13-905(C):                      Must consider the following factors:                      (1) the nature and circumstances of the offense;                      (2) the applicant's compliance with the conditions of probation, the sentence imposed,                      (3) any earlier or later convictions;                      (4) the victim's input and the status of victim restitution, if any;                      (5) the time that has elapsed since the completion of the applicant's sentence;                      (6) the applicant's age at the time of conviction;                      and                      (7) any other relevant factor.</p> <p>* Issue: do we have all the necessary info?</p>	<p>(After 10/29/23:)                      SB 1036: §13-905(K and L):                      If set aside granted, the court's order must include a certificate of second chance if convicted of a misdemeanor, unless has previously received a certificate for a felony.</p>	<p>Rule 36(d)(3):                      Must grant petition unless state establishes by clear and convincing evidence that the offense is not eligible for expungement or if the court finds that the offense identified in the petition is not eligible for expungement.</p>	<p>Rule 36.1(f):                      Must grant the petition if it determines that granting the petition is in the best interests of the petitioner and the public's safety, except 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 to seal case records, the court may not grant or deny the petition until the court disposes of that charge.</p>

**Set Asides, Second Chances, Expungements, Sealing**

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Hearing required?</b>	Rule 29.5 and §13-905(H): Court may set on request of party or own motion, must hold within 120 days of application unless court finds good cause for extension.	No	Rule 36(c): Court may set on request of party or if court concludes there are genuine issues of fact, must hold within 120 days of application unless court finds good cause for extension.	Rule 36.1(e): Yes, if requested by petitioner, prosecutor, or victim before the court has ruled. The court may sua sponte set a hearing before ruling. Must hold within 90 days of application, unless good cause

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Denials/Dismissals/Refiles</b>	Rule 29.6(b) and §13-905(I): Denials must be on the record and in writing.  29.6(c) allows a defendant to refile if denied after satisfying all requirements or resolving any other reasons for the denial.			Note: a denial prevents defendant from repeting for 3 years but a dismissal (eg, too soon) has no such impact. Rule 36.1(f).

	<b>Set Aside</b>	<b>Certificate of Second Chance</b>	<b>Expungement (Marijuana)</b>	<b>Sealing</b>
<b>Appeal allowed?</b>	Yes. §13-4033		§36-2862(F): Yes	Partial. Rule 36.1(h): An appeal from an order denying a petition may be taken only when the basis of the appeal is the defendant's eligibility to petition the court. §13-4033(A)(5)