

SUPREME COURT OF ARIZONA

In the Matter of)	Arizona Supreme Court
)	No. R-21-0023
RULE 36, RULES OF CRIMINAL)	
PROCEDURE,)	
)	
)	
)	
_____)	FILED 05/21/2021

**ORDER ADOPTING ON AN EMERGENCY BASIS
RULE 36, ARIZONA RULES OF CRIMINAL PROCEDURE**

On March 1, 2021, David K. Byers, on behalf of the Administrative Office of the Courts, filed a rule petition proposing the adoption, on an emergency basis, of a new Rule 36 of the Arizona Rules of Criminal Procedure. Having considered the petition and the public’s comments regarding the petition,

IT IS ORDERED, pursuant to Rule 28(h)(2) of the Rules of the Arizona Supreme Court, that new Rule 36 of the Arizona Rules of Criminal Procedure is adopted in accordance with the attachment to this order, effective July 12, 2021.

IT IS FURTHER ORDERED that the Court will consider whether to adopt Rule 36 on a permanent basis during its August 2021 Rules Agenda.

DATED this 21st day of May, 2021.

_____/s/_____
 ROBERT BRUTINEL
 Chief Justice

TO:

Rule 28 Distribution List
David K Byers
Hon Dan R Slayton
Kenneth N Vick
Jared G Keenan
Ellen S Katz
Brenda Munoz Furnish

ATTACHMENT
ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 36. Expunging Marijuana Records and Restoring Civil Rights

(a) Generally. This rule governs petitions to expunge records, vacate convictions, and restore civil rights that are filed under A.R.S. § 36-2862.

(1) Contents of a Petition.

(A) A petition must state the following:

- (1) the name, address, date of birth, and the email address, if known, for the subject of the petition;
- (2) any name, if different from above used by the person who is the subject of the petition at the time of arrest or charge;
- (3) the offense for which expungement is being requested;
- (4) the name of the arresting agency; and
- (5) if charges were filed, the court's case number.

(B) To assist the court in locating the records to be expunged, the petition should also state, if known:

- (1) the date of arrest;
- (2) if charges were filed, the name of the prosecuting agency;
- (3) if the case was initially filed in a justice court but was transferred to the superior court, the name of the justice court and the justice court case number;
- (4) whether there are any outstanding warrants or active payment plans; and
- (5) whether the subject of the petition was sentenced to probation.

(2) Petitioner's Signature; Attachments. If the petition is filed by the person who is the subject of the petition, the petitioner must sign the petition with the following declaration "I declare under penalty of perjury that the information I have provided in this Petition and any attachments is true and correct to the best of my knowledge." The petitioner may attach supporting documents and affidavits to the petition.

(3) Petitions Filed by a Prosecuting Agency. If a prosecuting agency files for expungement under A.R.S. § 36-2862(I), the petition must include the information required by (a)(1)(A), other than the email address, unless known, for the subject of the petition, and any information specified in (a)(1)(B) that the prosecutor knows at the time of filing.

(4) Place of Filing; Filing Fee. If the subject of the petition was charged with the offense listed in the petition, the petition must be filed in the court where the complaint or citation was concluded. If the case commenced in a justice court and was transferred to a superior court, the petition must be filed in the superior court. If the subject of the petition was arrested but never charged, the petition must be filed in the superior court in the county where the arrest occurred. The clerk may not charge a fee for filing a petition.

(b) Processing of Petition.

(1) Dismissal of the Petition. The court may dismiss a petition that fails to provide sufficient information to identify the records to be expunged. Before dismissing the petition for this reason, the court should refer the petitioner to the instructions for the petition form that will be published under (f) and inform the petitioner that the petition will be dismissed if the required information is not filed within 45 days.

(2) Transmitting Petition Filed by the Subject of the Petition. If the petition is not dismissed under (b)(1), the court must send a copy of the petition and supporting documentation submitted by the petitioner to the applicable prosecuting agency no later than 10 days after filing. The court must notify the prosecuting agency that the court may grant the petition if the State does not file a response within the time allowed by (b)(4).

(3) Processing a Petition Filed by a Prosecuting Agency. If a prosecuting agency files a petition, the prosecuting agency must notify the person who is the subject of the petition. The person is not required to make an appearance or file a response.

(4) Response. No later than 30 days after the petition is filed, an opposing party may file a response stating its objections to the petition, if any. The party filing the response must send a copy of the response to the petitioner.

(5) Reply. The petitioner may file a reply no later than 15 days after the response is filed.

(c) Hearing.

(1) Basis for a Hearing. The court may set a hearing on the petition on either party's request or if the court concludes there are genuine issues of fact regarding whether the petition should be granted.

(2) Time for Hearing. The hearing must be held no later than 120 days after the petition is filed, unless the court finds good cause for an extension.

(d) Disposition.

(1) Failure to Respond. The court may decide the petition without a hearing if no response is filed within the time allowed by (b)(4), or if the petition was filed by a prosecuting agency.

- (2) **Stay of Sentence.** The court has discretion to stay any aspect of the sentence imposed pending disposition of the petition.
- (3) **Burden of Proof.** The court must grant the petition unless the prosecuting agency 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.
- (4) **Action on Granting the Petition.** If the court grants the petition, the court must, as to any applicable count, vacate the conviction and sentence, if any, order that any record of the arrest, charge, conviction and sentence be expunged, and restore the civil rights of the subject of the petition, including the right to possess a firearm unless otherwise prohibited.
- (5) **Order.** The court must enter a signed order stating the court's findings of fact and conclusions of law.
- (e) **Notice by Clerk.** If the court grants the petition, the clerk must transmit the order to the arresting law enforcement agency identified in the petition and the Department of Public Safety. If the order is issued by a superior court, the clerk must also transmit the order to the justice court identified in the petition and to the probation department, if a term of probation was imposed.
- (f) **Forms.** The Administrative Director of the Administrative Office of the Courts is authorized to create and modify forms and instructions for use by the public and the courts to implement this rule. The director shall make the forms available on the self-service page of the Arizona Judicial Branch website, azcourts.gov. Any substantial variation from these forms must first be approved by the Administrative Director. A petitioner may file a petition that varies from the approved form so long as it includes the information required by this rule and complies with Rule 1.6.