

## **Felony Convictions, Guns And Firearm Rights Restoration In Arizona**

**By Melissa Clark**

The repercussions of a felony conviction can be felt after a sentence has long been served. One of the most significant repercussions is the loss of an individual's right to keep and bear firearms. This article provides general information about how firearm rights are affected, and how to get them back.

### Firearm Prohibitions

A person “[w]ho has been convicted within or without this state of a felony ... and whose civil right to possess or carry a gun or firearm has not been restored” is prohibited from owning, using, or otherwise possessing a firearm. A.R.S. §§ 13-3101(A)(7)(b), 13-3102(A)(4); 13-904(A)(5).

Possession of a firearm in Arizona while being a “prohibited possessor” is a serious offense with dire consequences. Under Arizona law, Felon in Possession of a Firearm is a Class 4 felony and carries a possible punishment ranging from 1 to 3.75 years imprisonment, depending on the facts of each individual case. A.R.S. § 13-702. Thankfully, Arizona law provides two different mechanisms for convicted felons to regain their firearm rights.

### Types of Arizona Offenses

Arizona categorizes felony convictions into three categories. There are “dangerous” offenses, “serious” offenses, and offenses that are neither. What category of felony a conviction falls into will determine which, if any of the firearm restoration processes are available and when.

Arizona law defines “serious” offenses as crimes where someone was killed, sexual offenses, crimes involving children, and crimes involving force. A “dangerous” offense means an offense involving the discharge, use, or threatening exhibition of a deadly weapon or dangerous instrument, or the intentional or knowing infliction of serious physical injury on another person. Typically the court specifically designates the offense as “dangerous” at the time of sentencing and it will appear on the court records. A.R.S. § 13-105.

Unfortunately, if the court enters a “dangerous” designation on the record, an individual would be unable to restore their firearm rights through set-aside or judicial firearm rights restoration. Those individuals are subject to a lifetime ban from owning, using, buying, or otherwise possessing firearms. Under current Arizona law, those individuals' only recourse is to apply for and receive a pardon from the governor of Arizona.

If an individual was convicted of a non-“serious”, non-“dangerous” offense, he or she may apply to set-aside their conviction pursuant to A.R.S. § 13-907 in order to restore their firearm rights. An individual convicted of a “serious” offense is still eligible to apply for set-aside, but even if their petition is granted, their firearm rights will not be

restored. However, individuals who were convicted of a “serious” offense are eligible to regain their firearm rights through a judicial firearm rights restoration. A.R.S. §§ 13-905 or 13-906.

### Restore Your Firearm Rights Through Conviction Set-Aside

When an Arizona court sets [aside a conviction](#), it allows a defendant to withdraw his or her plea of guilty and sets aside and dismisses the case. This is a powerful remedy for eligible individuals. If the applicant for set-aside can show that he or she fulfilled all conditions of probation or sentence imposed by the court and was successfully discharged, he or she can apply to the court where they were convicted to set-aside the case. A.R.S. § 13-907. A person who violated their probation may still set-aside their conviction.

The judge will look into the person’s history and conduct, and will set-aside the conviction if they are confident that the individual is reformed and deserving of relief. The court has authority to deny the request if an individual appears to pose a continuing threat to the public safety or welfare. This relief is similar to what states, like California, call [expungement](#).

Some people may still want firearm restoration in addition to set-aside since it affirmatively declares their right to possess a firearm is restored. A conviction set-aside restores firearm rights, but only by implication rather than express language.

### Restore Your Firearm Rights Through Judicial Firearm Restoration

Those convicted of a non-“serious” offenses who want an affirmative declaration of their right to possess a firearm must wait two years to pass after the conviction before applying for firearm rights restoration. An individual convicted of a “serious” offense must wait for ten years to pass before applying for firearm rights restoration under A.R.S. §§ 13-905 13-906.

In addition to meeting the required waiting period, the person seeking firearm rights restoration must complete probation or be released from prison and pay all fines and fees. The decision to restore a defendant’s right to possess a firearm is based upon careful evaluation of the underlying offense and the individual who is petitioning the court. Successful individuals typically demonstrate reform through consistent, law-abiding behavior since the time of their most recent conviction.

### How to Apply for Set-Aside or Judicial Firearm Rights Restoration

Whether you are applying for set-aside, judicial firearm rights restoration, or both, the processes are nearly identical. The applications must be filed in the court in which the person was originally convicted. The steps can vary by court and what sentence the individual received, but at the very least it requires an application be submitted to the court. Usually, the court will then give notice to the prosecuting attorney who will be given a chance to respond. Depending on the response of the prosecutor, the judge may

have a hearing on the matter. If a hearing is set, the applicant would be given a chance to provide evidence and argue to the judge why their request should be granted. The judge ultimately decides whether to an individual's request for set-aside or judicial firearm restoration.

If an individual's petition for set-aside or firearm restoration or both is granted, he or she will receive an order signed by the judge. The court will automatically update its records and is supposed to send the order to state agencies, who in turn reports it to their federal counterpart. A petition for firearm restoration and/or set-aside must be filed for each disabling offense for which an individual is convicted. A single petition for set-aside or firearm restoration will only restore rights in relation to the single case it is filed for.

### Restoring your State Rights Restores Also Restores Your Rights Under Federal Law

The State of Arizona and the federal government each have their own separate bans on individuals convicted of felonies possessing firearms. *See* 18 U.S.C. § 922(g)(1); see also A.R.S. § 13-912. Therefore, an individual convicted of a felony in the State of Arizona must restore their firearm rights both with the State and federal government. Thankfully, if an individual was convicted of a felony Arizona State court, firearm rights restoration by the state automatically restores the individual's federal rights as well. 18 U.S.C. § 921(a)(20).

Many people also are prohibited from owning a firearm because they were convicted of a misdemeanor in state court. Arizona does not have legal remedy to restore rights that were lost as a result of a [misdemeanor conviction for domestic violence](#).

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