

2021 -- H 5878

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

Introduced By: Representative John J. Lombardi

Date Introduced: February 24, 2021

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 12-1.3-2 and 12-1.3-3 of the General Laws in Chapter 12-1.3 entitled
2 "Expungement of Criminal Records" are hereby amended to read as follows:

3 **12-1.3-2. Motion for expungement.**

4 (a) Any person who is a first offender may file a motion for the expungement of all records
5 and records of conviction for a felony or misdemeanor by filing a motion in the court in which the
6 conviction took place; provided, that no person who has been convicted of a crime of violence shall
7 have his or her records and records of conviction expunged; and provided, that all outstanding
8 court-imposed or court-related fees, fines, costs, assessments, charges, and/or any other monetary
9 obligations have been paid, unless such amounts are reduced or waived by order of the court.

10 (b) Notwithstanding § 12-1.3-1(3) ("first offender"), any person who has been convicted
11 of more than one misdemeanor, but fewer than six (6) misdemeanors, and has not been convicted
12 of a felony may file a motion for the expungement of any or all of those misdemeanors by filing a
13 motion in the court in which the convictions took place; provided that convictions for offenses
14 under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are not eligible for and may not be expunged
15 under this subsection.

16 (c) Subject to subsection (a), a person may file a motion for the expungement of records
17 relating to a misdemeanor conviction after five (5) years from the date of the completion of his or
18 her sentence.

1 (d) Any person who has been convicted of more than one felony, and who has not been
2 convicted of a felony which is considered a crime of violence, may file a motion for the
3 expungement of any or all of those felonies in the court in which the convictions took place;
4 provided that multiple convictions for offenses under chapter 29 of title 12 are not eligible for and
5 may not be expunged.

6 ~~(e)~~(e) Subject to subsection (a), a person may file a motion for the expungement of records
7 relating to a felony conviction after ten (10) years from the date of the completion of his or her
8 sentence.

9 ~~(f)~~(f) Subject to § 12-19-19(c), and without regard to subsections (a) through (c) of this
10 section, a person may file a motion for the expungement of records relating to a deferred sentence
11 upon its completion, after which the court will hold a hearing on the motion.

12 ~~(g)~~(g) Subject to subsection (b) of this section, a person may file a motion for the
13 expungement of records relating to misdemeanor convictions after ten (10) years from the date of
14 the completion of their last sentence.

15 ~~(h)~~(h) Notwithstanding the provisions of subsections (a) through (f) of this section, a person
16 may file a motion for the expungement of records related to an offense that has been decriminalized
17 subsequent to the date of their conviction, after which the court will hold a hearing on the motion
18 in the court in which the original conviction took place.

19 (i) Subject to subsection (d) of this section, a person may file a motion for the expungement
20 of records relating to felony convictions after twenty (20) years from the date of the completion of
21 their last sentence.

22 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

23 (a) Any person filing a motion for expungement of the records of his or her conviction
24 pursuant to § 12-1.3-2 shall give notice of the hearing date set by the court to the department of the
25 attorney general and the police department that originally brought the charge against the person at
26 least ten (10) days prior to that date.

27 (b) The court, after the hearing at which all relevant testimony and information shall be
28 considered, may, in its discretion, order the expungement of the records of conviction of the person
29 filing the motion if it finds:

30 (1)(i) That in the five (5) years preceding the filing of the motion, if the conviction was for
31 a misdemeanor, or in the ten (10) years preceding the filing of the motion, if the conviction was for
32 a felony, the petitioner has not been convicted nor arrested for any felony or misdemeanor; there
33 are no criminal proceedings pending against the person; that the person does not owe any
34 outstanding court-imposed or court-related fees, fines, costs, assessments, or charges, unless such

1 amounts are reduced or waived by order of the court, and he or she has exhibited good moral
2 character;

3 (ii) That after a hearing held under the provisions of § 12-19-19(c), the court finds that the
4 person has complied with all of the terms and conditions of the deferral agreement including, but
5 not limited to, the payment in full of any court-ordered fines, fees, costs, assessments, and
6 restitution to victims of crimes; there are no criminal proceedings pending against the person; and
7 he or she has established good moral character. Provided, that no person who has been convicted
8 of a crime of violence shall have their records relating to a deferred sentence expunged; or

9 (iii) Subject only to §§ 12-1.3-2(b) and (f), that in the ten (10) years preceding the filing of
10 the motion, if the convictions were for multiple misdemeanors, the petitioner has not been
11 convicted nor arrested for any felony or misdemeanor; there are no criminal proceedings pending
12 against the person; and they have exhibited good moral character; and, provided that convictions
13 for offenses under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are not eligible and may not be
14 expunged under this subsection: or

15 (iv) That in the twenty (20) years preceding the filing of the motion, if the convictions were
16 for multiple felonies, the petitioner has not been convicted nor arrested for any felony or
17 misdemeanor, there are no criminal proceedings pending against the person, and they have
18 exhibited good moral character.

19 (2) That the petitioner's rehabilitation has been attained to the court's satisfaction and the
20 expungement of the records of his or her conviction is consistent with the public interest.

21 (c) If the court grants the motion, it shall, after payment by the petitioner of a one hundred
22 dollar (\$100) fee to be paid to the court, order all records and records of conviction relating to the
23 conviction expunged and all index and other references to it removed from public inspection. A
24 copy of the order of the court shall be sent to any law enforcement agency and other agency known
25 by either the petitioner, the department of the attorney general, or the court to have possession of
26 the records. Compliance with the order shall be according to the terms specified by the court.

27 (d) The defendant shall be advised at the hearing that any and all bail money relating to a
28 case that remains on deposit and is not claimed at the time of expungement shall be escheated to
29 the state's general treasury in accordance with chapter 12 of title 8.

30 (e) In cases of expungement sought pursuant to § 12-1.3-2(g), the court shall, after a hearing
31 at which it finds that all conditions of the original criminal sentence have been completed, and any
32 and all fines, fees, and costs related to the conviction have been paid in full, order the expungement
33 without cost to the petitioner. At the hearing, the court may require the petitioner to demonstrate
34 that the prior criminal conviction would qualify as a decriminalized offense under current law. The

1 demonstration may include, but is not limited to, an affidavit signed by the petitioner attesting to
2 the fact that the prior conviction qualifies as a decriminalized offense under current Rhode Island
3 law.

4 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

1 This act would allow those persons with multiple felony convictions to file a motion for
2 expungement of all records and records of convictions; provided that no person who has been
3 convicted of any felony which is considered a crime of violence shall have their records of
4 conviction expunged and convictions for offenses under chapter 29 of title 12 shall not be eligible
5 for and may not be expunged. Motions may be brought after twenty (20) years from the date of the
6 completion of their last sentence.

7 This act would take effect upon passage.

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