

2011 -- S 0216

LC00754

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO CRIMINAL PROCEDURE -- EXPUNGEMENT OF CRIMINAL RECORDS

Introduced By: Senators Metts, Jabour, and Pichardo

Date Introduced: February 09, 2011

Referred To: Senate 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
2 entitled "Expungement of Criminal Records" are hereby amended to read as follows:

3 **12-1.3-2. Motion for expungement.** -- (a) Any person who is a first offender may file a
4 motion for the expungement of all records and records of conviction for a felony or misdemeanor
5 by filing a motion in the court in which the conviction took place, provided that no person who
6 has been convicted of a crime of violence shall have his or her records and records of conviction
7 expunged.

8 (b) Subject to subsection (a) of this section, a person may file a motion for the
9 expungement of records relating to a misdemeanor conviction after five (5) years from the date of
10 the completion of his or her sentence.

11 (c) Subject to subsection (a) of this section, a person may file a motion for the
12 expungement of records relating to a felony conviction after ten (10) years from the date of the
13 completion of his or her sentence.

14 (d) Subject to subsection (a) of this section, a person may file a motion for the
15 expungement of records relating to a felony conviction after five (5) years from the date of the
16 completion of his or her sentence if:

17 (1) One or more extraordinary circumstances as defined in subsection 12-1.3-3(c) exist;
18 and

19 (2) The motion for expungement includes a sworn statement of the person seeking the

1 [expungement stating that he or she meets one or more of the extraordinary circumstances as](#)
2 [defined in subsection 12-1.3-3\(c\).](#)

3 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting. --** (a)

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

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

11 (1) That in the five (5) years preceding the filing of the motion, if the conviction was for
12 a misdemeanor, or in the ten (10) years preceding the filing of the motion if the conviction was
13 for a felony, the petitioner has not been convicted nor arrested for any felony or misdemeanor,
14 there are no criminal proceedings pending against the person, and he or she has exhibited good
15 moral character;

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

18 [\(c\) In addition to the requirements and procedures set forth in this section a person](#)
19 [seeking an expungement of his or her criminal records pursuant to subsection 12-1.3-2\(d\) shall be](#)
20 [required to prove, and the court must find by a preponderance of the evidence that:](#)

21 [\(1\) In the five \(5\) years preceding the filing of the motion the petitioner has not been](#)
22 [convicted nor arrested for any felony or misdemeanor, there are no criminal proceedings pending](#)
23 [against the person, and he or she has exhibited good moral character;](#)

24 [\(2\) Extraordinary circumstances exist and the interests of justice would be served by the](#)
25 [court exercising its discretion and granting the motion for expungement;](#)

26 [\(3\) For the purposes of this section "extraordinary circumstances" can include, but are not](#)
27 [limited to, any one or more than one of the following:](#)

28 [\(i\) Since the date of the completion of his or her sentence the petitioner has been](#)
29 [continuously employed and is supporting his or her family with the earnings derived from his or](#)
30 [her employment;](#)

31 [\(ii\) Since the date of the completion of his or her sentence the petitioner has furthered](#)
32 [their education by attaining a college or other advanced degree from an institution of higher](#)
33 [learning beyond high school;](#)

34 [\(iii\) Since the date of the completion of his or her sentence the petitioner has been](#)

1 continuously involved in activities that serve to better the community in which he or she lives;

2 (iv) Since the date of the completion of his or her sentence the petitioner has been
3 continuously and successfully involved in mental health and/or substance abuse treatment relating
4 to the behavior which originally caused him or her to offend;

5 (v) Aside from the felony conviction that is the subject of the motion for expungement
6 the petitioner is otherwise eligible and meets the criteria for professional certification or licensing
7 in his or her field of employment;

8 (vi) Aside from the felony conviction that is the subject of the motion for expungement
9 the petitioner is otherwise eligible and meets the criteria for induction into the military of the
10 United States of America;

11 (vii) The felony conviction that is the subject of the motion for expungement is causing
12 the petitioner and his or her family extraordinary hardship; or

13 (viii) Any other substantial and compelling circumstances that exist based upon the
14 character and background of the petitioner; the nature and circumstances of the offense; and the
15 rehabilitation efforts that the petitioner has made.

16 (d) The judge must set forth on the record and in open court the circumstances which he
17 or she has found by a preponderance of the evidence as justification to grant an expungement
18 under this subsection. If an expungement is granted under this subsection and the office of the
19 attorney general objects to said expungement it may appeal to the Rhode Island supreme court
20 within seven (7) days of the court's decision granting said expungement. If an expungement is
21 granted under this subsection the court cannot enter an order granting said expungement until ten
22 (10) days after the granting of the person's motion to expunge.

23 ~~(e)~~ (e) If the court grants the motion, it shall order all records and records of conviction
24 relating to the conviction expunged and all index and other references to it deleted. A copy of the
25 order of the court shall be sent to any law enforcement agency and other agency known by either
26 the petitioner, the department of the attorney general, or the court to have possession of the
27 records. Compliance with the order shall be according to the terms specified by the court.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would grant judges the discretion to expunge the felony record of an individual
2 otherwise eligible after five (5) years from the completion of their sentence, provided one or more
3 extraordinary circumstances exist as defined and the judge makes a finding on the record. The act
4 would also give the attorney general's office a right of appeal of that expungement.

5 This act would take effect upon passage.

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