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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO CRIMINAL PROCEDURE - EXPUNGEMENTS

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 26, 2015

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 3-8-12 of the General Laws in Chapter 3-8 entitled "Regulation of
2 Sales" is hereby amended to read as follows:

3 **3-8-12. Expungement of certain criminal records. --** The court records of conviction of
4 any person convicted of a violation of § 3-8-6, 3-8-9, or 3-8-10, while between the age of
5 eighteen (18) to twenty-one (21) shall be expunged: without the requirement of filing a motion
6 pursuant to chapter 1.3 of title 12; provided, that all outstanding court imposed or court related
7 fees, fines, costs, assessments, charges and/or any other obligations imposed by the court have
8 been paid and/or satisfied, or are reduced or waived by order of the court. The defendant shall be
9 advised that any and all bail money relating to a case which remains on deposit and is not claimed
10 at the time of expungement shall be escheated to the state's general treasury in accordance with
11 chapter 12 of title 8.

12 SECTION 2. Section 12-1-12.1 of the General Laws in Chapter 12-1 entitled
13 "Identification and Apprehension of Criminals" is hereby amended to read as follows:

14 **12-1-12.1. Motion for sealing of records of persons acquitted or otherwise**
15 **exonerated. --** (a) Any person who is acquitted or otherwise exonerated of all counts in a
16 criminal case, including, but not limited to, dismissal or filing of a no true bill or no information,
17 may file a motion for the sealing of his or her court records in the case, provided, that no person
18 who has been convicted of a felony shall be entitled to relief under this section except for those
19 records in cases of acquittal after trial.

1 (b) Any person filing a motion for sealing his or her court records pursuant to this
2 section shall give notice of the hearing date set by the court to the department of the attorney
3 general and the police department which originally brought the charge against the person at least
4 ten (10) days prior to the hearing.

5 (c) If the court, after the hearing at which all relevant testimony and information shall be
6 considered, finds that the person is entitled to the sealing of the records, it shall order the sealing
7 of the court records of the person in that case.

8 (d) The clerk of the court shall, within forty-five (45) days of the order of the court
9 granting the motion, place under seal the court records in the case in which the acquittal,
10 dismissal, no true bill, no information or other exoneration has been entered.

11 (e) Notwithstanding any other provision of this section, in all cases involving a filing
12 subsequent to a plea of not guilty, guilty or nolo contendere to a charge of a crime involving
13 domestic violence, the court having jurisdiction over the case shall retain the records of the case
14 for a period of three (3) years from the date of filing. The records shall not be expunged; or
15 sealed; ~~or otherwise destroyed~~ for a period of three (3) years from the date of the filing.

16 (f) The defendant shall be advised at the hearing that any and all bail money relating to a
17 case which remains on deposit and is not claimed at the time of sealing shall be escheated to the
18 state's general treasury in accordance with chapter 12 of title 8.

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

21 **12-1.3-2. Motion for expungement.** -- (a) Any person who is a first offender may file a
22 motion for the expungement of all records and records of conviction for a felony or misdemeanor
23 by filing a motion in the court in which the conviction took place, provided that no person who
24 has been convicted of a crime of violence shall have his or her records and records of conviction
25 expunged; provided, that all outstanding court imposed or court related fees, fines, costs,
26 assessments, charges and/or any other monetary obligations have been paid, unless such amounts
27 are reduced or waived by order of the court.

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

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

34 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.** -- (a)

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

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

8 (1) That in the five (5) years preceding the filing of the motion, if the conviction was for
9 a misdemeanor, or in the ten (10) years preceding the filing of the motion if the conviction was
10 for a felony, the petitioner has not been convicted nor arrested for any felony or misdemeanor,
11 there are no criminal proceedings pending against the person, that the person does not owe any
12 outstanding court imposed or court related fees, fines, costs, assessments, or charges, unless such
13 amounts are reduced or waived by order of the court, and he or she has exhibited good moral
14 character;

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

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

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

27 SECTION 4. Section 12-10-12 of the General Laws in Chapter 12-10 entitled
28 "Preliminary Proceedings in District Courts" is hereby amended to read as follows:

29 **12-10-12. Filing of complaints.** -- (a) Subject to any other provisions of law relative to
30 the filing of complaints for particular crimes, any judge of the district court or superior court may
31 place on file any complaint in a criminal case other than a complaint for the commission of a
32 felony or a complaint against a person who has been convicted of a felony or a private complaint.
33 The court may in its discretion require, as a condition of the filing, the performance of services
34 for the public good or may attach any other conditions to it that the court shall determine;

1 provided, in cases where the court ordered restitution totals less than two hundred dollars (\$200)
2 to an injured party pursuant to this section or § 12-19-34, the court shall require that full
3 restitution be made at the time of sentencing if the court determines that the defendant has the
4 present ability to make the restitution.

5 (b) ~~It shall be an express~~ Express condition conditions of any filing in accordance with
6 this section that the defendant shall be at all times during the one year keep the peace and be of
7 good behavior and shall have paid all outstanding court imposed or court related fees, fines, costs,
8 assessments, charges, and/or any other monetary obligations unless reduced or waived by order of
9 the court. A violation of ~~that these~~ express condition conditions or any other condition set by the
10 court, shall be deemed a violation of the filing and the matter which was filed may be resurrected
11 by the court. A determination of whether a violation has occurred shall be made by the court in
12 accordance with the procedures relating to a violation of probation, §§ 12-19-9 and 12-19-14.

13 (c) In the event the complaint was originally filed under this section subsequent to the
14 defendant's plea of guilty or nolo contendere to the charges, the court, if it finds there to have
15 been a violation, may sentence the defendant. In the event the court filed the complaint under this
16 section while the defendant maintained a plea of not guilty, if the court finds there to have been a
17 violation, it may proceed to the further disposition of the complaint according to law. If no action
18 is taken on the complaint for a period of one year following the filing, the complaint shall be
19 automatically ~~quashed and destroyed~~ expunged. ~~All records relating to the complaint shall be~~
20 ~~expunged pursuant to the provisions of chapter 1.3 of this title. Further, if any record of the~~
21 ~~complaint has been entered into a docket or alphabetical index, whether kept in writing or in an~~
22 ~~electronic information storage system or other data compilation system, all references to the~~
23 ~~identity of the person charged by the complaint shall be removed from the docket or index.~~ No
24 criminal record shall result; provided, that in any civil action for a tort, a plea of guilty or a
25 finding of guilty should be admissible notwithstanding the fact that the complaint has been filed.

26 (d) Notwithstanding the foregoing provisions of this section, in the event a complaint for
27 a crime involving domestic violence was originally filed under this section subsequent to the
28 defendant's plea of guilty or nolo contendere to the charges, the court, if it finds there to have
29 been a violation, may sentence the defendant. In the event the court filed the complaint for a
30 crime involving domestic violence under this section while the defendant maintained a plea of not
31 guilty, if the court finds there to have been a violation, it may proceed to the further disposition of
32 the complaint for a crime involving domestic violence according to law. If, for a period of one
33 year after the date of filing the defendant is not charged with a violation pursuant to subsection
34 (b) of this section, the filed complaint for the crime involving domestic violence shall be

1 automatically quashed and shall not be resurrected. If, for a period of three (3) years after the date
2 of filing, the defendant is not charged with a crime involving domestic violence, or if so charged,
3 is acquitted or the complaint is dismissed, all records relating to the filed complaint for a crime
4 involving domestic violence shall be expunged without the requirement of filing a motion
5 pursuant to chapter 1.3 of title 12 ~~pursuant to the provisions of chapter 1.3 of this title. Further, if~~
6 ~~any record of the complaint for a crime involving domestic violence has been entered into a~~
7 ~~docket or alphabetical index, whether kept in writing or in an electronic information storage~~
8 ~~system or other data compilation system, all references to the identity of the person charged by~~
9 ~~the complaint for a crime involving domestic violence shall be removed from the docket index at~~
10 ~~the same time the complaint is quashed or destroyed.~~ No criminal records shall result, unless in
11 any civil action for a tort, in which a plea of guilty or a finding of guilty is admissible
12 notwithstanding the fact that the complaint has been filed. Provided however, that in sentencing a
13 defendant for a crime involving domestic violence of which the defendant was charged within
14 three (3) years after the filing of a prior crime involving domestic violence to which the defendant
15 pleaded guilty or nolo contendere, the court may take the plea into consideration.

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

19 SECTION 5. 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 - EXPUNGEMENTS

1 This act would make uniform the process of case expungement for different types of
2 cases, would clarify whether a motion and payment for an expungement is required pursuant to
3 chapter 1.3 of title 12, and would also require that all outstanding costs, fines and monetary
4 obligations owed by the defendant be paid as a condition of expungement unless reduced or
5 waived by the court and, after the defendant is given notice, would permit any unclaimed bail to
6 be transferred to the unclaimed property division of the general treasurer's office in accordance
7 with chapter 12 of title 8.

8 This act would take effect upon passage.

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