

2010 -- S 2318

LC01394

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO CRIMINAL PROCEDURE - EXPUNGEMENT OF CRIMINAL RECORDS

Introduced By: Senators Blais, McCaffrey, Maselli, Jabour, and Metts

Date Introduced: February 11, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 12-1.3-1 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 **12-1.3-1. Definitions.** -- For purposes of this chapter only, the following definitions
4 apply:

5 (1) "Crime of violence" includes murder, manslaughter, first degree arson, kidnapping
6 with intent to extort, robbery, larceny from the person, first degree sexual assault, second degree
7 sexual assault, first and second degree child molestation, assault with intent to murder, assault
8 with intent to rob, assault with intent to commit first degree sexual assault, burglary, and entering
9 a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.

10 (2) "Expungement of records and records of conviction" means the sealing and retention
11 of all records of a conviction and/or probation and the removal from active files of all records and
12 information relating to conviction and/or probation.

13 (3)(i) ~~"First offender"~~ "First Offender Felony" means a person who has been convicted
14 of a felony offense ~~or a misdemeanor offense~~, and who has not been previously convicted of or
15 placed on probation for a felony ~~or a misdemeanor~~ within ten (10) years of the filing of the
16 motion to expunge, and against whom there is no criminal proceeding pending in any court.

17 (ii) "First offender misdemeanor" means a person who has been convicted of a
18 misdemeanor offense, and who has not been previously convicted of or placed on probation for a
19 misdemeanor within five (5) years of the filing of the motion to expunge, and against whom there

1 is no criminal proceeding pending in any court.

2 (4) "Law enforcement agency" means a state police organization of this or any other
3 state, the enforcement division of the department of environmental management, the office of the
4 state fire marshal, the capitol police, a law enforcement agency of the federal government, and
5 any agency, department, or bureau of the United States government which has as one of its
6 functions the gathering of intelligence data.

7 (5) "Records" and "records of conviction and/or probation" include all court records, all
8 records in the possession of any state or local police department, the bureau of criminal
9 identification and the probation department, including, but not limited to, any fingerprints,
10 photographs, physical measurements, or other records of identification. The terms "records" and
11 "records of conviction, and/or probation" do not include the records and files of the department of
12 attorney general which are not kept by the bureau of criminal identification in the ordinary course
13 of the bureau's business.

14 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting. --** (a)

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

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

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

27 (B) That in the ten (10) years preceding the filing of the motion for a conviction of a
28 felony, the petitioner has not been convicted nor arrested for any subsequent felony, and there are
29 no criminal proceedings pending against the person, and he or she has exhibited good moral
30 character;

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

33 (c) If the court grants the motion, it shall, after payment by the petitioner of a one
34 hundred dollar (\$100) fee to be paid to the court order all records and records of conviction

1 relating to the conviction expunged and all index and other references to it deleted. A copy of the
2 order of the court shall be sent to any law enforcement agency and other agency known by either
3 the petitioner, the department of the attorney general, or the court to have possession of the
4 records. Compliance with the order shall be according to the terms specified by the court.

5 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 permit the expungement of records of individuals who, for a misdemeanor
2 conviction, have not committed any misdemeanors or felonies within five years of the end of their
3 misdemeanor sentence, or for felony convictions, have not committed any new felonies within ten
4 years from the end of the felony sentence, provided the person also does not have any pending
5 criminal proceedings, and have exhibited good moral character.

6 This act would take effect upon passage.

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