

2010 -- S 2561

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO CRIMINAL PROCEDURE -- EXPUNGEMENT

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 11, 2010

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 section 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 12-1.3; provided all outstanding court imposed or court related fees, fines,
7 costs, assessments, charges and/or any other monetary obligations have been paid. Any and all
8 bail money relating to a case which remains on deposit at the time of expungement shall be
9 forfeited to the state's general treasury.

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

12 **12-1-12.1. Motion for sealing of records of persons acquitted or otherwise**
13 **exonerated.** -- (a) Any person who is acquitted or otherwise exonerated of all counts in a
14 criminal case, including, but not limited to, dismissal or filing of a no true bill or no information,
15 may file a motion for the sealing of his or her court records in the case, provided, that no person
16 who has been convicted of a felony shall have his or her court records sealed pursuant to this
17 section.

18 (b) Any person filing a motion for sealing his or her court records pursuant to this
19 section shall give notice of the hearing date set by the court to the department of the attorney

1 general and the police department which originally brought the charge against the person at least
2 ten (10) days prior to the hearing.

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

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

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

14 (f) Any and all bail money relating to a case which remains on deposit at the time of
15 expungement shall be forfeited to the state's general treasury.

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

18 **12-1.3-2. Motion for expungement.** -- (a) Any person who is a first offender may file a
19 motion for the expungement of all records and records of conviction for a felony or misdemeanor
20 by filing a motion in the court in which the conviction took place, provided that no person who
21 has been convicted of a crime of violence shall have his or her records and records of conviction
22 expunged, provided all outstanding court imposed or court related fees, fines, costs, assessments,
23 charges and/or any other monetary obligations have been paid.

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

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

30 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.** -- (a)
31 Any person filing a motion for expungement of the records of his or her conviction pursuant to
32 section 12-1.3-2 shall give notice of the hearing date set by the court to the department of the
33 attorney general and the police department which originally brought the charge against the person
34 at least ten (10) days prior to that date.

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

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

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

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

19 (d) Any and all bail money relating to a case which remains on deposit at the time of
20 expungement shall be forfeited to the state's general treasury.

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

23 **12-10-12. Filing of complaints.** -- (a) Subject to any other provisions of law relative to
24 the filing of complaints for particular crimes, any judge of the district court or superior court may
25 place on file any complaint in a criminal case other than a complaint for the commission of a
26 felony or a complaint against a person who has been convicted of a felony or a private complaint.
27 The court may in its discretion require, as a condition of the filing, the performance of services
28 for the public good or may attach any other conditions to it that the court shall determine;
29 provided, in cases where the court ordered restitution totals less than two hundred dollars (\$200)
30 to an injured party pursuant to this section or section 12-19-34, the court shall require that full
31 restitution be made at the time of sentencing if the court determines that the defendant has the
32 present ability to make the restitution.

33 (b) ~~It shall be an express condition~~ Express conditions of any filing in accordance with
34 this section shall be that the defendant shall at all times during the one year keep the peace and be

1 of good behavior and shall have paid all outstanding court imposed or court related fees, fines,
2 costs, assessments, charges and/or any other monetary obligations. A violation of ~~that~~ these
3 express ~~condition~~ conditions or any other condition set by the court shall be deemed a violation of
4 the filing and the matter which was filed may be resurrected by the court. A determination of
5 whether a violation has occurred shall be made by the court in accordance with the procedures
6 relating to a violation of probation, sections 12-19-9 and 12-19-14.

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

20 (d) Notwithstanding the foregoing provisions of this section, in the event a complaint for
21 a crime involving domestic violence was originally filed under this section subsequent to the
22 defendant's plea of guilty or nolo contendere to the charges, the court, if it finds there to have
23 been a violation, may sentence the defendant. In the event the court filed the complaint for a
24 crime involving domestic violence under this section while the defendant maintained a plea of not
25 guilty, if the court finds there to have been a violation, it may proceed to the further disposition of
26 the complaint for a crime involving domestic violence according to law. If, for a period of one
27 year after the date of filing the defendant is not charged with a violation pursuant to subsection
28 (b) of this section, the filed complaint for the crime involving domestic violence shall be
29 automatically ~~quashed and shall not be resurrected~~ expunged without the requirement of filing a
30 motion pursuant to chapter 12-1.3. If, for a period of three (3) years after the date of filing, the
31 defendant is not charged with a crime involving domestic violence, or if so charged, is acquitted
32 or the complaint is dismissed, all records relating to the filed complaint for a crime involving
33 domestic violence shall be expunged ~~pursuant to the provisions of chapter 1.3 of this title.~~
34 ~~Further, if any record of the complaint for a crime involving domestic violence has been entered~~

1 ~~into a docket or alphabetical index, whether kept in writing or in an electronic information storage~~
2 ~~system or other data compilation system, all references to the identity of the person charged by~~
3 ~~the complaint for a crime involving domestic violence shall be removed from the docket index at~~
4 ~~the same time the complaint is quashed or destroyed~~ without the requirement of filing a motion
5 pursuant to chapter 12-1.3. No criminal records shall result, unless in any civil action for a tort, in
6 which a plea of guilty or a finding of guilty is admissible notwithstanding the fact that the
7 complaint has been filed. Provided however, that in sentencing a defendant for a crime involving
8 domestic violence of which the defendant was charged within three (3) years after the filing of a
9 prior crime involving domestic violence to which the defendant pleaded guilty or nolo
10 contendere, the court may take the plea into consideration.

11 (e) Any and all bail money relating to a case which remains on deposit at the time of
12 expungement shall be forfeited to the state's general treasury.

13 SECTION 5. Section 31-41.1-10 of the General Laws in Chapter 31-41.1 entitled
14 "Adjudication of Traffic Offenses" is hereby amended to read as follows:

15 **31-41.1-10. Expungement.** -- All violations within this title which are in the jurisdiction
16 of the traffic tribunal or of a municipal court shall by operation of law, after three (3) years,
17 following adjudication of the violation and after expiration of any mandatory state or federal
18 record-retention period, be ~~deleted~~ expunged from the records of the traffic tribunal or the
19 municipal court and from the records of the division of motor vehicles. These ~~deletions~~
20 expungements shall be ~~in addition to and not in place of any expungement~~ made without the
21 requirement of a motion as provided for by chapter 1.3 of title 12.

22 SECTION 6. 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 -- EXPUNGEMENT

1 This act would make uniform the process of expungements for certain types of cases and
2 would provide for the expungement of certain records without a requirement that a motion be
3 filed. This act would also require that all outstanding costs, fines and monetary obligations owed
4 by the defendant be paid as a condition of expungement.

5 This act would take effect upon passage.

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