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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 - EXPUNGEMENT OF CRIMINAL RECORDS

Introduced By: Senators Archambault, Lombardi, Metts, McCaffrey, and Jabour

Date Introduced: February 25, 2015

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 12-1.3-1, 12-1.3-2 and 12-1.3-3 of the General Laws in Chapter
2 12-1.3 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) "First offender" means a person who has been convicted of a felony offense or a
14 misdemeanor offense, excluding any violation of § 31-11-18, and who has not been previously
15 convicted of or placed on probation for a felony or a misdemeanor and against whom there is no
16 criminal proceeding pending in any court.

17 (4) "Law enforcement agency" means a state police organization of this or any other
18 state, the enforcement division of the department of environmental management, the office of the
19 state fire marshal, the capitol police, a law enforcement agency of the federal government, and

1 any agency, department, or bureau of the United States government which has as one of its
2 functions the gathering of intelligence data.

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

10 **12-1.3-2. Motion for expungement.** -- (a) Any person who is a first offender may file a
11 motion for the expungement of all records and records of conviction for a felony or misdemeanor
12 by filing a motion in the court in which the conviction took place, provided that no person who
13 has been convicted of a crime of violence shall have his or her records and records of conviction
14 expunged.

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

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

21 (d) Any person who is not a first time offender or previously convicted of a "crime of
22 violence," as defined in § 12-1.3-1 may petition the court for the expungement of all records of
23 misdemeanor and felony convictions by filing a motion in the court with the proper jurisdiction
24 consistent with the requirements of § 12-1.3-3 and requesting an evidentiary hearing before a
25 magistrate or judge.

26 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.** -- (a)
27 Any person filing a motion for expungement of the records of his or her conviction pursuant to §
28 12-1.3-2 shall give notice of the hearing date set by the court to the department of the attorney
29 general and the police department which originally brought the charge against the person at least
30 ten (10) days prior to that date.

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

34 (1) That in the five (5) years preceding the filing of the motion, if the conviction was for

1 a misdemeanor, or in the ten (10) years preceding the filing of the motion if the conviction was
2 for a felony, the petitioner has not been convicted ~~nor arrested~~ for any felony or misdemeanor,
3 there are no criminal proceedings pending against the person, and he or she has exhibited good
4 moral character;

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

7 (3) In the case of a petitioner who is not a first time offender under § 12-1.3-1, the court
8 shall make specific findings on the record as to the reasons why the motion should be granted or
9 denied. The court shall make specific findings which shall include, but are not limited to, the
10 number of prior convictions, the length of time since the prior convictions, the offenses for which
11 the petitioner was convicted, along with all other considerations consistent with this section. If the
12 court, after the presentation of the evidence, finds that in the interest of justice the petitioner
13 should be permitted the expungement, the motion shall be granted. Notwithstanding the above, no
14 convictions for capital offenses may be considered for expungement.

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

21 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 exclude violations of operating a motor vehicle with a suspended or
2 expired license from the definition of convictions within the expungement statute. This act would
3 also allow a non-first time offender, as defined by the definitions listed in this section, to apply
4 for an evidentiary hearing in seeking expungement by the court. This act would also exclude
5 individuals convicted of "crimes of violence".

6 This act would take effect upon passage.

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