

2020 -- H 7091

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LC003004  
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF  
CRIMINALS

Introduced By: Representatives Knight, Ajello, Millea, Speakman, and Cassar

Date Introduced: January 10, 2020

Referred To: House 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.**

4 (a) Any person who is a first offender may file a motion for the expungement of all  
5 records and records of conviction for a felony or misdemeanor by filing a motion in the court in  
6 which the conviction took place; provided, that no person who has been convicted of a crime of  
7 violence shall have his or her records and records of conviction expunged; and provided, that all  
8 outstanding court-imposed or court-related fees, fines, costs, assessments, charges, and/or any  
9 other monetary obligations have been paid, unless such amounts are reduced or waived by order  
10 of the court.

11 (b) Notwithstanding § 12-1.3-1(3) ("first offender"), any person who has been convicted  
12 of more than one misdemeanor, but fewer than six (6) misdemeanors, and has not been convicted  
13 of a felony may file a motion for the expungement of any or all of those misdemeanors by filing a  
14 motion in the court in which the convictions took place; provided that convictions for offenses  
15 under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are not eligible for and may not be  
16 expunged under this subsection.

17 (c) Subject to subsection (a), a person may file a motion for the expungement of records  
18 relating to a misdemeanor conviction after five (5) years from the date of the completion of his or

1 her sentence.

2 (d) Subject to subsection (a), a person may file a motion for the expungement of records  
3 relating to a felony conviction after ten (10) years from the date of the completion of his or her  
4 sentence, provided, however, that any person convicted of an offense constituting simple  
5 possession of a controlled substance under § 21-28-4.01 may file a motion for expungement of  
6 records after five (5) years.

7 (e) Subject to § 12-19-19(c), and without regard to subsections (a) through (c) of this  
8 section, a person may file a motion for the expungement of records relating to a deferred sentence  
9 upon its completion, after which the court will hold a hearing on the motion.

10 (f) Subject to subsection (b) of this section, a person may file a motion for the  
11 expungement of records relating to misdemeanor convictions after ten (10) years from the date of  
12 the completion of their last sentence.

13 (g) Notwithstanding the provisions of subsections (a) through (f) of this section, a person  
14 may file a motion for the expungement of records related to an offense that has been  
15 decriminalized subsequent to the date of their conviction, after which the court will hold a hearing  
16 on the motion in the court in which the original conviction took place.

17 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

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

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

32 (ii) That after a hearing held under the provisions of § 12-19-19(c), the court finds that  
33 the person has complied with all of the terms and conditions of the deferral agreement including,  
34 but not limited to, the payment in full of any court-ordered fines, fees, costs, assessments, and

1 restitution to victims of crimes; there are no criminal proceedings pending against the person; and  
2 he or she has established good moral character. Provided, that no person who has been convicted  
3 of a crime of violence shall have their records relating to a deferred sentence expunged; or

4 (iii) Subject only to §§ 12-1.3-2(b) and (f), that in the ten (10) years preceding the filing  
5 of the motion, if the convictions were for multiple misdemeanors, the petitioner has not been  
6 convicted nor arrested for any felony or misdemeanor; there are no criminal proceedings pending  
7 against the person; and they have exhibited good moral character; and, provided that convictions  
8 for offenses under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are not eligible and may not be  
9 expunged under this subsection.

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 removed from public~~  
15 ~~inspection.~~ A copy of the order of the court shall be sent to any law enforcement agency and other  
16 agency known by either the petitioner, the department of the attorney general, or the court to have  
17 possession of the records. Compliance with the order shall be according to the terms specified by  
18 the court.

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

22 (e) In cases of expungement sought pursuant to § 12-1.3-2(g), the court shall, after a  
23 hearing at which it finds that all conditions of the original criminal sentence have been completed,  
24 and any and all fines, fees, and costs related to the conviction have been paid in full, order the  
25 expungement without cost to the petitioner. At the hearing, the court may require the petitioner to  
26 demonstrate that the prior criminal conviction would qualify as a decriminalized offense under  
27 current law. The demonstration may include, but is not limited to, an affidavit signed by the  
28 petitioner attesting to the fact that the prior conviction qualifies as a decriminalized offense under  
29 current Rhode Island law.

30 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 make those persons convicted of felony simple possession of a controlled  
2 substance eligible for expungement five (5) years after completion of their sentence. The act  
3 would also repeal the requirement that those seeking expungement pay a fee to the court.

4           This act would take effect upon passage.

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