

# 2013 -- H 5178 SUBSTITUTE A

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LC00479/SUB A  
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## STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- SENTENCE AND EXECUTION

Introduced By: Representatives Lombardi, Lima, DeSimone, Slater, and O'Brien

Date Introduced: January 29, 2013

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

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

3 **12-1-12. Destruction or sealing of records of persons acquitted or otherwise**  
4 **exonerated.** -- (a) Any fingerprint, photograph, physical measurements, or other record of  
5 identification, heretofore or hereafter taken by or under the direction of the attorney general, the  
6 superintendent of state police, the member or members of the police department of any city or  
7 town or any other officer authorized by this chapter to take them, of a person under arrest, prior to  
8 the final conviction of the person for the offense then charged, shall be destroyed by all offices or  
9 departments having the custody or possession within sixty (60) days after there has been an  
10 acquittal, dismissal, no true bill, no information, [dismissal pursuant to subsection 12-19-19 \(c\)](#), or  
11 the person has been otherwise exonerated from the offense with which he or she is charged, and  
12 the clerk of court where the exoneration has taken place shall, consistent with section 12-1-12.1,  
13 place under seal all records of the person in the case including all records of the division of  
14 criminal identification established by section 12-1-4; provided, that the person shall not have been  
15 previously convicted of any felony offense. Any person who shall violate any provision of this  
16 section shall be fined not exceeding one hundred dollars (\$100).

17 (b) requirements of this section shall also apply to persons detained by police, but not  
18 arrested or charged with an offense, or to persons against whom charges have been filed by the  
19 court, and the period of such filing has expired.

1 (c) Notwithstanding any other provision of this section, any person who has been  
2 charged with a complaint for a crime involving domestic violence where the complaint was filed  
3 upon a plea of not guilty, guilty or nolo contendere pursuant to section 12-10-12, must wait a  
4 period of three (3) years from the date of filing before the records associated with the charge can  
5 be expunged, sealed or otherwise destroyed.

6 **12-1-12.1. Motion for sealing of records of persons acquitted or otherwise**  
7 **exonerated.** -- (a) Any person who is acquitted or otherwise exonerated of all counts in a  
8 criminal case, including, but not limited to, dismissal or filing of a no true bill or no information,  
9 [or a dismissal pursuant to subsection 12-19-19 \(c\)](#), may file a motion for the sealing of his or her  
10 court records in the case, provided, that no person who has been convicted of a felony shall have  
11 his or her court records sealed pursuant to this section.

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

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

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

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

27 SECTION 2. Section 12-19-19 of the General Laws in Chapter 12-19 entitled "Sentence  
28 and Execution" is hereby amended to read as follows:

29 **12-19-19. Sentencing on plea of guilty or nolo contendere -- Deferment of sentence. -**  
30 **2** (a) Whenever any person is arraigned before the superior court and pleads guilty or nolo  
31 contendere, he or she may be at any time sentenced by the court; provided, that if at any time the  
32 court formally defers sentencing then the person and the attorney general shall enter into a written  
33 deferral agreement to be filed with the clerk of the court. When a court formally defers sentence,  
34 the court may only impose sentence within five (5) years from and after the date of the written

1 deferral agreement, unless during the five (5) year period, the person shall be declared to have  
2 violated the terms and conditions of the deferment pursuant to subsection (b) of this section in  
3 which event the court may impose sentence.

4 (b) It shall be an express condition of any deferment of sentence in accordance with this  
5 section that the person agreeing to said deferment of sentence shall at all times during the period  
6 of deferment keep the peace and be of good behavior. A violation of this express condition or any  
7 other condition set forth by either the court or the written deferral agreement shall violate the  
8 terms and conditions of the deferment of sentence and the court may impose sentence. The  
9 determination of whether a violation has occurred shall be made by the court in accordance with  
10 procedures relating to violation of probation sections 12-19-2 and 12-19-14.

11 (c) If a person, after the completion of the five (5) year deferment period is determined  
12 by the court, after hearing thereupon, to have complied with all of the terms and conditions of the  
13 written deferral agreement, including, but not limited to, the payment in full of any court ordered  
14 finances, fees, costs, assessments, and restitution to victims of crime, then the matter shall be  
15 dismissed ~~then the person shall be exonerated of the charges for which sentence was deferred and~~  
16 ~~records relating to the criminal complaint, information or indictment shall be sealed pursuant to~~  
17 ~~the provision of section 12-1-12. Further, if any record of the criminal complaint, information or~~  
18 ~~indictment has been entered into a docket or alphabetical index, whether in writing or electronic~~  
19 ~~information storage or other data compilation system, all references to the identity of the person~~  
20 ~~charged by the complaint shall be sealed.~~

21 SECTION 3. This act shall take effect upon passage, the provisions shall be given  
22 retroactive and prospective effect, and shall apply to all matters pending upon the effective date  
23 of this act.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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RELATING TO CRIMINAL PROCEDURE -- SENTENCE AND EXECUTION

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1 This act would address the retroactive of the deferred sentence expungement process.

2 This act would take effect upon passage, the provisions would be given retroactive and

3 prospective effect and would apply to all matters pending upon the effective date of this act.

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