

2015 -- H 5033

=====
LC000028
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO CRIMINAL PROCEDURE - EXPUNGEMENT OF CRIMINAL RECORDS

Introduced By: Representative John J. Lombardi

Date Introduced: January 08, 2015

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.** -- (a) Any person who is a first offender may file a
4 motion for the expungement of all records and records of conviction for a felony or misdemeanor
5 by filing a motion in the court in which the conviction took place, provided that no person who
6 has been convicted of a crime of violence shall have his or her records and records of conviction
7 expunged.

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

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

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

17 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.** -- (a)
18 Any person filing a motion for expungement of the records of his or her conviction pursuant to
19 section 12-1.3-2 shall give notice of the hearing date set by the court to the department of the

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

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

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

11 (ii) That after a hearing held under the provisions of § 12-19-19(c), the court finds that
12 the person has complied with all of the terms and conditions of the deferral agreement including,
13 but not limited to, the payment in full of any court ordered fines, fees, costs, assessments and
14 restitution to victims of crimes, there are no criminal proceedings pending against the person and
15 he or she has established good moral character. Provided, that no person who has been convicted
16 of a crime of violence shall have his or her records relating to a deferred sentence expunged.

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

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

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

27 **12-19-19. Sentencing on plea of guilty or nolo contendere -- Deferment of sentence. -**

28 (a) Whenever any person is arraigned before the superior court and pleads guilty or nolo
29 contendere, he or she may be at any time sentenced by the court; provided, that if at any time the
30 court formally defers sentencing then the person and the attorney general shall enter into a written
31 deferral agreement to be filed with the clerk of the court. When a court formally defers sentence,
32 the court may only impose sentence within five (5) years from and after the date of the written
33 deferral agreement, unless during the five (5) year period, the person shall be declared to have
34 violated the terms and conditions of the deferment pursuant to subsection (b) of this section in

1 which event the court may impose sentence.

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

9 (c) If a person, after the completion of the five (5) year deferment period is determined
10 by the court after a hearing to have complied with all of the terms and conditions of the ~~written~~
11 deferral agreement including, but not limited to, the payment in full of any court ordered fines,
12 fees, costs, assessments and restitution to victims of crime, then the person shall become
13 immediately eligible for consideration for expungement pursuant to the provisions of §§ 12-1.3-2
14 and 12-1.3-3. ~~, then the person shall be exonerated of the charges for which sentence was deferred~~
15 ~~and records relating to the criminal complaint, information or indictment shall be sealed pursuant~~
16 ~~to the provision of section 12-1-12. Further, if any record of the criminal complaint, information~~
17 ~~or indictment has been entered into a docket or alphabetical index, whether in writing or~~
18 ~~electronic information storage or other data compilation system, all references to the identity of~~
19 ~~the person charged by the complaint shall be sealed.~~

20 SECTION 3. This act shall take effect upon passage, the provisions shall be given
21 retroactive and prospective effect, and it shall apply to all matters pending upon the effective date
22 of this act including anyone who after a hearing is determined by the court to have complied with
23 all of the terms and conditions of their deferred agreement.

=====
LC000028
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE - EXPUNGEMENT OF CRIMINAL RECORDS

1 This act would clarify that the provisions of § 12-19-19, permitting the expungement of
2 records upon the successful completion of a deferred sentence, are to be applied both
3 retroactively and prospectively. The act would also require that the court hold a hearing, before
4 granting expungement, to determine whether the person has complied with all of the terms and
5 conditions of the deferral agreement.

6 This act would take effect upon passage, the provisions would be given retroactive and
7 prospective effect, and it would apply to all matters pending upon the effective date of this act
8 including anyone who after a hearing is determined by the court to have complied with all of the
9 terms and conditions of their deferred agreement.

=====
LC000028
=====