

2017 -- H 5205 SUBSTITUTE A

LC000730/SUB A/3

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO CRIMINAL PROCEDURE - EXPUNGEMENT OF CRIMINAL RECORDS

Introduced By: Representatives Lima, Slater, Fellela, Almeida, and Diaz

Date Introduced: January 26, 2017

Referred To: House Judiciary

(Attorney General)

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 expunged
16 under this subsection.

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

1 ~~(d)~~ Subject to subsection (a), a person may file a motion for the expungement of
2 records relating to a felony conviction after ten (10) years from the date of the completion of his
3 or her sentence.

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

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

10 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

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

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

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

31 (iii) Subject only to §§ 12-1.3-2(b) and (f), that in the ten (10) years preceding the filing of
32 the motion, if the convictions were for multiple misdemeanors, the petitioner has not been
33 convicted nor arrested for any felony or misdemeanor, there are no criminal proceedings pending
34 against the person, and they have exhibited good moral character; and, provided that convictions

1 [for offenses under chapter 29 of title 12, §§31-27-2 or 31-27-2.1 are not eligible and may not be](#)
2 [expunged under this subsection.](#)

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

5 (c) If the court grants the motion, it shall, after payment by the petitioner of a one
6 hundred dollar (\$100) fee to be paid to the court, order all records and records of conviction
7 relating to the conviction expunged and all index and other references to it removed from public
8 inspection. A copy of the order of the court shall be sent to any law enforcement agency and other
9 agency known by either the petitioner, the department of the attorney general, or the court to have
10 possession of the records. Compliance with the order shall be according to the terms specified by
11 the court.

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

15 SECTION 2. This act shall take effect upon passage and apply to all convictions imposed
16 before or after the effective date.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO CRIMINAL PROCEDURE - EXPUNGEMENT OF CRIMINAL RECORDS

1 This act would enable persons with less than six (6) misdemeanor convictions to obtain
2 an expungement of the records of those convictions, as long as the person has not been convicted
3 of any felony. Misdemeanor convictions for domestic violence or driving under the influence of
4 alcohol or drugs and refusal to submit to a chemical test, would not be eligible for expungement
5 under this act. Persons with multiple misdemeanor convictions may only file for expungement at
6 least ten (10) years after the completion of their sentences and the person has not been arrested
7 for any felony or other misdemeanors, and has no pending criminal proceedings.

8 This act would take effect upon passage and would apply to all convictions imposed
9 before or after the effective date.

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