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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO CRIMINAL OFFENSES -- GENERAL PROVISIONS

Introduced By: Representatives Batista, Potter, and Cruz

Date Introduced: January 26, 2024

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 11-1-2 of the General Laws in Chapter 11-1 entitled "General  
2 Provisions" is hereby amended to read as follows:

3 **11-1-2. Felony, misdemeanor — Petty misdemeanor, and violation distinguished.**

4 [\(a\)](#) Unless otherwise provided, any criminal offense which at any given time may be  
5 punished by imprisonment for a term of more than one year, or by a fine of more than one thousand  
6 dollars (\$1,000), is declared to be a felony; any criminal offense which may be punishable by  
7 imprisonment for a term not exceeding one year, or by a fine of not more than one thousand dollars  
8 (\$1,000), or both, is declared to be a misdemeanor; any criminal offense which may be punishable  
9 by imprisonment for a term not exceeding six (6) months or by a fine of not more than five hundred  
10 dollars (\$500), or both, is declared to be a petty misdemeanor; and any offense which may be  
11 punished by only a fine of not more than five hundred dollars (\$500) is declared to be a violation.

12 [\(b\) Any criminal case which is disposed with a sentence limited to the imposition of a fine](#)  
13 [only, shall not constitute a criminal conviction for any purpose.](#)

14 SECTION 2. Sections 12-1.3-1 and 12-1.3-2 of the General Laws in Chapter 12-1.3 entitled  
15 "Expungement of Criminal Records" are hereby amended to read as follows:

16 **12-1.3-1. Definitions.**

17 For purposes of this chapter only, the following definitions apply:

18 (1) "Crime of violence" includes murder, manslaughter, first degree arson, kidnapping with  
19 intent to extort, robbery, larceny from the person, first degree sexual assault, second degree sexual

1 assault, first and second degree child molestation, assault with intent to murder, assault with intent  
2 to rob, assault with intent to commit first degree sexual assault, burglary, and entering a dwelling  
3 house with intent to commit murder, robbery, sexual assault, or larceny.

4 (2) "Expungement of records and records of conviction" means the sealing and retention  
5 of all records of a conviction and/or probation and the removal from active files of all records and  
6 information relating to conviction and/or probation. [For purposes of this chapter, a criminal case  
7 which is disposed of with the imposition of a fine only, or a sentence of probation with a fine or  
8 the imposition of a suspended sentence with a fine, and which does not include any period of  
9 incarceration, shall not constitute a conviction. Any sentence which is disposed of with the  
10 imposition of fine only, shall be eligible for expungement pursuant to § 12-1.3-2.](#)

11 (3) "First offender" means a person who has been convicted of a felony offense or a  
12 misdemeanor offense, and who has not been previously convicted of or placed on probation for a  
13 felony or a misdemeanor and against whom there is no criminal proceeding pending in any court.

14 (4) "Law enforcement agency" means a state police organization of this or any other state,  
15 the enforcement division of the department of environmental management, the office of the state  
16 fire marshal, the capitol police, a law enforcement agency of the federal government, and any  
17 agency, department, or bureau of the United States government which has as one of its functions  
18 the gathering of intelligence data.

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

26 **12-1.3-2. Motion for expungement.**

27 (a) Any person who is a first offender may file a motion for the expungement of all records  
28 and records of conviction for a felony or misdemeanor by filing a motion in the court in which the  
29 conviction took place; provided, that no person who has been convicted of a crime of violence shall  
30 have his or her records and records of conviction expunged; and provided, that all outstanding  
31 court-imposed or court-related fees, fines, costs, assessments, charges, and/or any other monetary  
32 obligations have been paid, unless such amounts are reduced or waived by order of the court.  
33 [Pursuant to § 12-1.3-1\(2\) a criminal case which is disposed of with the imposition of a fine only  
34 shall not constitute a conviction and shall be eligible for expungement pursuant to this section.](#)

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

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

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

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

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

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

23 SECTION 3. Section 12-18-3 of the General Laws in Chapter 12-18 entitled "Probation"  
24 is hereby amended to read as follows:

25 **12-18-3. Plea of nolo contendere followed by probation — Effect.**

26 (a) Whenever any person shall be arraigned before the district court or superior court and  
27 shall plead nolo contendere, and the court places the person on probation pursuant to § 12-18-1,  
28 ~~then upon the completion of~~ during the probationary period, upon its completion, and absent a  
29 specific finding by the hearing judge that the defendant violated the terms of their probation or by  
30 a finding that they committed a new offense, as charged, and not a finding that the defendant failed  
31 to keep the peace and be of good behavior, ~~violation of the terms of the probation,~~ the plea and  
32 probation shall not constitute a conviction for any purpose. Evidence of a plea of nolo contendere  
33 followed by a period of probation, completed without violation of the terms of the probation, may  
34 not be introduced in any court proceeding, except that a period of probation with or without a

1 [violation of the terms of probation, shall constitute a prior conviction for purpose of enhancing a](#)  
2 [sentence for any offense that mandates enhanced penalties for subsequent convictions, and](#) that  
3 records may be furnished to a sentencing court following the conviction of an individual for a crime  
4 committed subsequent to the successful completion of probation on the prior offense.

5 (b) This section shall not apply to any person who is sentenced to serve a term in the adult  
6 correctional institutions or who is given a suspended or deferred sentence in addition to probation.

7 (c) The provisions of this section shall not apply to persons making applications for the  
8 purchase of a firearm, or to persons making applications for permission to carry a concealable  
9 weapon, if the crime for which the plea was entered was a crime of violence as defined in § 11-47-  
10 2 or the plea was entered pursuant to chapter 28 of title 21. In these cases a plea of nolo contendere  
11 followed by probation shall be deemed a conviction for the purposes stated in this subsection.

12 SECTION 4. Section 12-19-8 of the General Laws in Chapter 12-19 entitled "Sentence and  
13 Execution" is hereby amended to read as follows:

14 **12-19-8. Suspension of sentence and probation by superior or district court.**

15 (a) Application. Except where the suspension of sentence shall otherwise be prohibited by  
16 law, and subject to the purposes and limits imposed by this section and § 12-19-8.1, whenever any  
17 defendant shall appear for sentence before the superior or district court, the court may impose a  
18 sentence and suspend the execution of the sentence, in whole or in part, or place the defendant on  
19 probation without the imposition of a suspended sentence. The suspension shall place the defendant  
20 on probation for the time of probation that the court may fix and pursuant to the terms and  
21 conditions set by § 12-19-8.1.

22 (b) Duration. The period of probation for a felony shall be set for a period of time as  
23 required by law, or in accordance with judicial sentencing benchmarks. The period of probation for  
24 a misdemeanor, where no sentence is imposed or where sentence is entirely suspended, may be for  
25 any period up to the maximum time of sentence provided by applicable statutes. Where sentence is  
26 imposed and suspended in part, the term ordered to be served and the period of probation together  
27 shall not exceed the maximum time of sentence provided by applicable statutes. [Pursuant to § 12-](#)  
28 [18-3, any period of probation, absent the imposition of a period of imprisonment, suspended or not,](#)  
29 [shall not constitute a conviction.](#)

30 (c) [Deleted by P.L. 2017, ch. 345, § 1 and P.L. 2017, ch. 351, § 1].

31 SECTION 5. 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 provide, in criminal cases, that the imposition of a fine, or sentences of  
2 probation or a suspended sentence, or combination thereof, absent a period of incarceration, shall  
3 not constitute a conviction and that a case disposed of by fine alone, would also be eligible for  
4 expungement. A period of probation standing alone, however, would be sufficient to enhance  
5 sentences for those offenses carrying enhanced penalties for subsequent convictions.

6           This act would take effect upon passage.

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