

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

Introduced By: Representatives Williams, Giraldo, Morales, Perez, and Alzate

Date Introduced: March 02, 2022

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

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

3 **12-1-12.1. Motion for sealing of records of persons acquitted or otherwise exonerated.**

4 (a) Any person who is acquitted or otherwise exonerated of all counts in a criminal case,
5 including, but not limited to, dismissal or filing of a no true bill or no information, may file a motion
6 for the sealing of his or her court records in the case.

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

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

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

17 (e) Notwithstanding any other provision of this section, in all cases involving a filing
18 subsequent to a plea of ~~not guilty~~, guilty, or nolo contendere to a charge of a crime involving

1 domestic violence, the court having jurisdiction over the case shall retain the records of the case
2 for a period of three (3) years from the date of filing. The records shall not be expunged or sealed
3 for a period of three (3) years from the date of the filing.

4 (f) The defendant shall be advised at the hearing that any and all bail money relating to a
5 case that remains on deposit and ~~is if~~ not claimed ~~at the time of~~ within forty-eight (48) hours from
6 the time of the sealing shall be escheated to the state's general treasury in accordance with chapter
7 12 of title 8.

8 SECTION 2. Sections 12-1.3-2, 12-1.3-3 and 12-1.3-4 of the General Laws in Chapter 12-
9 1.3 entitled "Expungement of Criminal Records" are hereby amended to read as follows:

10 **12-1.3-2. Motion for expungement.**

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

18 (b) Notwithstanding § 12-1.3-1(3) ("first offender"), any person who has been convicted
19 of more than one misdemeanor, but fewer than six (6) misdemeanors, and has not been convicted
20 of a felony offense constituting a crime of violence may file a motion for the expungement of any
21 or all of those misdemeanors by filing a motion in the court in which the convictions took place;
22 ~~provided that convictions for offenses under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are not~~
23 ~~eligible for and may not be expunged under this subsection;~~ provided, however, that convictions
24 for offenses under chapter 29 of title 12 or §§ 31-27-2 or 31-27-2.1 shall not be counted toward the
25 number of relevant convictions under this subsection and further, provided, that any person with
26 only one conviction under chapter 29 of title 12 or §§ 31-27-2 or 31-27-2.1 shall be eligible to have
27 their records expunged for those offenses five (5) years after the conviction occurs and any person
28 with no more than two (2) convictions for those offenses shall be eligible to have those records
29 expunged ten (10) years after those convictions occur if they have not otherwise been arrested or
30 convicted for any other offense subsequent to the last conviction.

31 (c) Subject to subsection (a), a person may file a motion for the expungement of records
32 relating to a misdemeanor conviction after ~~five (5)~~ three (3) years from the date of the completion
33 of his or her sentence.

34 (d) Subject to subsection (a), a person may file a motion for the expungement of records

1 relating to a felony conviction after ~~ten (10)~~ three and one half (3.5) years from the date of the
2 completion of his or her sentence. Notwithstanding § 12-1.3-1(3) ("first offender"), any person who
3 has been convicted of more than one felony, but fewer than six (6) felonies, and has not been
4 convicted of a felony offense constituting a crime of violence, may file a motion for the
5 expungement of any or all of those felonies by filing a motion in the court in which the convictions
6 took place; provided, that convictions for felony offenses under chapter 29 of title 12, § 31-27-2 or
7 § 31-27-2.1 are not eligible for and may not be expunged under this subsection.

8 (f) Subject to subsection (b) of this section, a person may file a motion for the expungement
9 of records relating to misdemeanor convictions after ~~ten (10)~~ three and one half (3.5) years from
10 the date of the completion of their last sentence. Further subject to subsection (d) of this section, a
11 person may file a motion for the expungement of records relating to felony convictions after ten
12 (10) years from the date of 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 decriminalized
15 subsequent to the date of their conviction, after which the court will hold a hearing on the motion
16 in the court in which the original conviction took place. The court shall expunge any records of
17 conviction for any offense that has been decriminalized.

18 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

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

26 (1)(i) That in the ~~five (5)~~ three (3) years preceding the filing of the motion, if the conviction
27 was for a misdemeanor, or in the ~~ten (10)~~ five (5) years preceding the filing of the motion, if the
28 conviction was for a felony, the petitioner has not been convicted nor arrested for any felony or
29 misdemeanor; there are no criminal proceedings pending against the person; that the person does
30 not owe any outstanding court-imposed or court-related fees, fines, costs, assessments, or charges,
31 unless such amounts are reduced or waived by order of the court, and he or she has exhibited good
32 moral character;

33 (ii) That after a hearing held under the provisions of § 12-19-19(c), the court finds that the
34 person has complied with all of the terms and conditions of the deferral agreement including, but

1 not limited to, the payment in full of any court-ordered fines, fees, costs, assessments, and
2 restitution to victims of crimes; there are no criminal proceedings pending against the person; and
3 he or she has established good moral character. ~~Provided, that no person who has been convicted~~
4 ~~of a crime of violence shall have their records relating to a deferred sentence expunged~~; or

5 (iii) Subject only to §§ 12-1.3-2(b) and (f), that in the ~~ten (10)~~ three (3) years preceding the
6 filing of the motion, if the convictions were for multiple misdemeanors, or ten (10) years if the
7 convictions were for multiple felonies, the petitioner has not been convicted nor arrested for any
8 felony or misdemeanor; there are no criminal proceedings pending against the person; and they
9 have exhibited good moral character; and, provided, subject to § 12-1.3-2 (b), (d) and (f), that
10 convictions for offenses under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are not eligible and
11 may not be expunged under this subsection.

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

14 (c) If the court grants the motion, it shall, after payment by the petitioner of a one hundred
15 dollar (\$100) fee to be paid to the court, order all records and records of conviction relating to the
16 conviction expunged and all index and other references to it removed from public inspection. A
17 copy of the order of the court shall be sent to any law enforcement agency and other agency known
18 by either the petitioner, the department of the attorney general, or the court to have possession of
19 the record including, but not limited to, the department of probation and parole. Compliance with
20 the order shall be according to the terms specified by the court.

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

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

32 **12-1.3-4. Effect of expungement of records -- Access to expunged records -- Wrongful**
33 **disclosure.**

34 (a) Any person having his or her record expunged shall be released from all penalties and

1 disabilities resulting from the crime of which he or she had been convicted, ~~except, upon conviction~~
2 ~~of any subsequent crime, the expunged conviction may be considered as a prior conviction in~~
3 ~~determining the sentence to be imposed.~~

4 (b) In any application for employment, license, or other civil right or privilege, or any
5 appearance as a witness, a person whose conviction of a crime has been expunged pursuant to this
6 chapter may state that he or she has never been convicted of the crime; provided, that if the person
7 is an applicant for a law enforcement agency position, for admission to the bar of any court, an
8 applicant for a teaching certificate, under chapter 11 of title 16, a coaching certificate under § 16-
9 11.1-1, or the operator or employee of an early childhood education facility pursuant to chapter
10 48.1 of title 16, the person shall disclose the fact of a conviction.

11 (c) Whenever the records of any conviction and/or probation of an individual for the
12 commission of a crime have been expunged under the provisions of this chapter, any custodian of
13 the records of conviction relating to that crime shall not disclose the existence of the records upon
14 inquiry from any source unless the inquiry is that of the individual whose record was expunged,
15 ~~that of a sentencing court following the conviction of the individual for the commission of a crime,~~
16 or that of a bar admission, character and fitness, or disciplinary committee, board, or agency, or
17 court which is considering a bar admission, character and fitness, or disciplinary matter, or that of
18 the commissioner of elementary and secondary education, or that of any law enforcement agency
19 when the nature and character of the offense with which an individual is to be charged would be
20 affected by virtue of the person having been previously convicted of the same offense.

21 (d) The custodian of any records which have been expunged pursuant to the provisions of
22 this chapter shall only release or allow access to those records for the purposes specified in
23 subsections (b) or (c) of this section or by order of a court. Any agency and/or person who willfully
24 refuses to carry out the expungement of the records of conviction pursuant to § 12-1.3-2, or this
25 section or willfully releases or willfully allows access to records of conviction, knowing them to
26 have been expunged, shall be civilly liable.

27 SECTION 3. This act shall take effect upon passage.

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LC004008
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

- 1 This act would lower the time limitations for certain expungement and amend the eligibility
- 2 requirements for certain expungements.
- 3 This act would take effect upon passage.

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LC004008
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