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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO CRIMINAL PROCEDURE - WRONGFUL ARREST - MISTAKEN
IDENTITY

Introduced By: Senators Pichardo, Jabour, Metts, Goldin, and Nesselbush

Date Introduced: February 25, 2015

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 12-1 of the General Laws entitled "Identification and Apprehension
2 of Criminals" is hereby amended by adding thereto the following section:

3 **12-1-12.2. Sealing of arrest records for wrongful arrest due to mistaken identity or**
4 **any other reason - Notification. – (a) Definitions.**

5 (1) "Law enforcement agency" means the department of attorney general, the
6 superintendent of the state police or his/her designee, the member or members of the police
7 department of any city or town, a state or local police organization of this or any other state, the
8 enforcement division of the department of environmental management, the office of the state fire
9 marshal, the capitol police, a law enforcement agency of the federal government, and any agency,
10 department, or bureau of the United States government which has as one of its functions the
11 gathering of intelligence data.

12 (2) "Destruction or sealing of records" means and include any fingerprint, photograph,
13 physical measurements, or other record of identification, heretofore or hereafter taken by or under
14 the direction of the attorney general, the superintendent or his/her designees of state police, the
15 member or members of the police department of any city or town, the enforcement division of the
16 department of environmental management, the office of the state fire marshal, the capitol police,
17 a law enforcement agency of the federal government, and any agency, department or bureau of
18 the United States government which has as one of its functions the gathering of intelligence data

1 or any other officer authorized by this chapter to take them, of a person under arrest.

2 (b) Any law enforcement agency subsequent to the arrest of any person, that determines
3 that such person was wrongfully or incorrectly arrested as a result of mistaken identity or any
4 other reason or wrongfully fingerprinted, photographed or otherwise has generated any record of
5 arrest for investigatory purposes and as a result of such wrongful arrest, no charges have been
6 filed in any court of this state, shall within sixty (60) days of such determination that the arrest
7 was wrongful or without probable cause, seal all such arrest records and destroy all identifying
8 information and indices of arrest including, but not limited to, photographs and fingerprints. DNA
9 samples obtained from such person shall be handled in accordance with the provisions of chapter
10 1.5 of title 12 "DNA detection of sexual and violent offenders" during and related to the
11 investigation.

12 (c) Any law enforcement agency that arrests or reports such arrest to other law
13 enforcement agency shall within sixty (60) days of making the determination that the arrest was
14 wrongful or without probable cause also notify all other agencies to which it has transmitted such
15 identifying information and including, but not limited to, the state's bureau of criminal
16 identification (BCI), the National Crime Information Identity Center (NCIC) and/or any other
17 state or federal agency which compiles, retains or collects any arrest or identifying information of
18 arrestees, that the arrest was wrongful and that any and all records transmitted or generated shall
19 be sealed and/or destroyed as provided herein.

20 (d) Any such person arrested and not charged shall be entitled to have all records and
21 indices of arrest sealed and/or destroyed as provided herein regardless of any prior record of
22 arrest or conviction that may otherwise not be eligible for expungement pursuant to § 12-1.3-1 et
23 seq., or sealing pursuant to § 12-1-12 et seq.

24 (e) Any law enforcement agency, upon making such determination that such an arrest
25 was wrongful or without probable cause as provided herein, shall notify the person arrested that
26 the charge was dismissed or that no charges have been filed and that all arrest records and indices
27 of arrest have been sealed and/or destroyed consistent with this chapter.

28 (f) Any person arrested, detained or otherwise identified as a suspect and who is
29 thereafter exonerated consistent with the provisions contained herein, may deny for any purpose,
30 that the arrest ever occurred and under no circumstances shall such an arrestee be required to
31 disclose the arrest for any purpose including, but not limited to, any application for employment,
32 professional license, concealed weapons permit or the purchase of a firearm or other weapon.

33 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CRIMINAL PROCEDURE - WRONGFUL ARREST - MISTAKEN
IDENTITY

1 This act would require the sealing and destruction of all arrest records and indices of
2 arrest for those persons who are wrongfully arrested or detained by any law enforcement agency.
3 It would also provide that the arrest need not be disclosed for any purpose and would mandate
4 that the arresting agency notify the arrestee of the determination that the arrest was wrongful
5 and/or a case of mistaken identity.

6 This act would take effect upon passage.

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