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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO CRIMINAL PROCEDURE-IDENTIFICATION AND APPREHENSION OF
CRIMINALS

Introduced By: Senators Archambault, Lombardi, Metts, Jabour, and McCaffrey

Date Introduced: January 21, 2016

Referred To: Senate 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; and provided, that all outstanding court-imposed or court-related fees, fines, costs,
8 assessments, charges, and/or any other monetary obligations have been paid, unless such amounts
9 are reduced or waived by order of the court.

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

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

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

1 **12-1.3.3. Motion for expungement – Notice – Hearing – Criteria for granting. –(a)**

2 Any person filing a motion for expungement of the records of his or her conviction pursuant to §
3 12-1.3-2 shall give notice of the hearing date set by the court to the department of the attorney
4 general and the police department that originally brought the charge against the person at least ten
5 (10) days prior to that date.

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

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

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

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

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

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

34 SECTION 2. Section 12-19-19 of the General Laws in Chapter 12-19 entitled "Sentence

1 and Execution" is hereby amended to read as follows:

2 **12-19-19. Sentencing on plea of guilty or nolo contendere – Deferment of sentence. –**

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

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO CRIMINAL PROCEDURE-IDENTIFICATION AND APPREHENSION OF
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1 This act would clarify the provisions of §12-19-19 and make those persons who enter and
2 complete a deferred sentence agreement, immediately eligible for expungement of all arrest
3 records and indices of arrest provided that they have complied with all terms and conditions of
4 the deferred sentence agreement and have paid all costs, fines, assessments and restitution
5 ordered by the court. No expungement shall be granted unless the defendant has successfully
6 completed all terms and conditions, has no subsequent arrests and convictions and has no pending
7 charges at the time of his/her motion to expunge. If after a hearing, the court is satisfied that the
8 defendant has successfully complied with the deferred sentence agreement and has exhibited
9 good moral character, the court can order the expungement of said records.

10 This act would take effect upon passage and would have retroactive and prospective
11 effect and would apply to all matters pending upon the effective date of this act, including anyone
12 who after a learning determined by the court to have complied with all of the terms and
13 conditions of their deferred agreement.

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