

2017 -- H 5110

=====  
LC000217  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

—————  
A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Representatives Slater, Handy, Diaz, Edwards, and Blazejewski

Date Introduced: January 13, 2017

Referred To: House Judiciary

(Public Defender)

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 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) Subject to subsection (a), a person may file a motion for the expungement of records  
12 relating to a misdemeanor conviction after five (5) years from the date of the completion of his or  
13 her sentence.

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

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

1 (e) Without regard to subsections (a) through (c) of this section, a person may file a  
2 motion for the expungement of records related to an offense that has been decriminalized  
3 subsequent to the date of such conviction, after which the court will hold a hearing on the motion  
4 in the court in which the original conviction took place.

5 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

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

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

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

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

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

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

4 (e) In cases of expungement sought pursuant to §12-1.3-2(e), the court shall, after a  
5 hearing at which it finds that all conditions of the original criminal sentence have been completed  
6 and any and all fines, fees, and costs related to conviction have been paid in full, order the  
7 expungement without cost to the petitioner. At said hearing, the court may require the petitioner  
8 to demonstrate that the prior criminal conviction would qualify as a decriminalized offense under  
9 current law. Such demonstration may include, but is not limited to, an affidavit signed by the  
10 petitioner attesting to the fact that the prior conviction qualifies as a decriminalized offense under  
11 current law.

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

=====  
LC000217  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO CRIMINAL PROCEDURE

\*\*\*

- 1           This act would permit expungement of any criminal conviction for an offense that has
- 2    been decriminalized subsequent to the date of such conviction.
- 3           This act would take effect upon passage.

=====  
LC000217  
=====