

2018 -- S 2447

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- EXPUNGEMENT OF CRIMINAL RECORDS

Introduced By: Senators Metts, Jabour, Quezada, Crowley, and Lombardi

Date Introduced: February 15, 2018

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.**

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

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

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

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

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

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

14 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

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

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

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

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

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

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

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

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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1           This act would entitle a person who is convicted for a criminal offense that is later  
2 decriminalized, to petition the court for a hearing to have their criminal record expunged. Under  
3 certain conditions where the court has determined that all conditions of the original criminal  
4 sentence have been completed, and all fines, and costs have been paid in full, the court would  
5 order the expungement without cost to the petitioner.

6           This act would take effect upon passage.

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