

2019 -- H 5086

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO CRIMINAL PROCEDURE - IDENTIFICATION AND APPREHENSION OF
CRIMINALS

Introduced By: Representatives Lombardi, Hull, and Walsh

Date Introduced: January 10, 2019

Referred To: House 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
16 expunged 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

1 her sentence.

2 (d) Any person who has been convicted of more than one felony, and who has not been
3 convicted of a felony which is considered a crime of violence, may file a motion for the
4 expungement of any or all of those felonies in the court in which the convictions took place;
5 provided that multiple convictions for offenses under chapter 29 of title 12 are not eligible for and
6 may not be expunged.

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

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

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

16 ~~(g)~~(h) Notwithstanding the provisions of subsections (a) through ~~(h)~~(i) of this section, a
17 person may file a motion for the expungement of records related to an offense that has been
18 decriminalized subsequent to the date of their conviction, after which the court will hold a hearing
19 on the motion in the court in which the original conviction took place.

20 (i) Subject to subsection (d) of this section, a person may file a motion for the
21 expungement of records relating to felony convictions after twenty (20) years from the date of the
22 completion of their last sentence.

23 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

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

31 (1)(i) That in the five (5) years preceding the filing of the motion, if the conviction was
32 for a misdemeanor, or in the ten (10) years preceding the filing of the motion, if the conviction
33 was for a felony, the petitioner has not been convicted nor arrested for any felony or
34 misdemeanor; there are no criminal proceedings pending against the person; that the person does

1 not owe any outstanding court-imposed or court-related fees, fines, costs, assessments, or
2 charges, unless such amounts are reduced or waived by order of the court, and he or she has
3 exhibited good moral character;

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

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

16 (iv) That in the twenty (20) years preceding the filing of the motion, if the convictions
17 were for multiple felonies, the petitioner has not been convicted nor arrested for any felony or
18 misdemeanor, there are no criminal proceedings pending against the person, and they have
19 exhibited good moral character.

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

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

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

32 (e) In cases of expungement sought pursuant to § 12-1.3-2(g), the court shall, after a
33 hearing at which it finds that all conditions of the original criminal sentence have been completed,
34 and any and all fines, fees, and costs related to the conviction have been paid in full, order the

1 expungement without cost to the petitioner. At the hearing, the court may require the petitioner to
2 demonstrate that the prior criminal conviction would qualify as a decriminalized offense under
3 current law. The demonstration may include, but is not limited to, an affidavit signed by the
4 petitioner attesting to the fact that the prior conviction qualifies as a decriminalized offense under
5 current Rhode Island law.

6 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 - IDENTIFICATION AND APPREHENSION OF
CRIMINALS

1 This act would allow those persons with multiple felony convictions to file a motion for
2 expungement of all records and records of convictions; provided that no person who has been
3 convicted of any felony which is considered a crime of violence shall have their records of
4 conviction expunged and convictions for offenses under chapter 29 of title 12 shall not be eligible
5 for and may not be expunged. Motions may be brought after twenty (20) years from the date of
6 the completion of their last sentence.

7 This act would take effect upon passage.

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