

2020 -- H 7635

=====  
LC004512  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

—————  
A N A C T

RELATING TO CRIMINAL PROCEDURE -- EXPUNGEMENT OF CRIMINAL RECORDS

Introduced By: Representatives Slater, Diaz, Cassar, and Williams

Date Introduced: February 14, 2020

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 entitled  
2 "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 records  
5 and records of conviction for a felony or misdemeanor by filing a motion in the court in which the  
6 conviction took place; provided, that no person who has been convicted of a crime of violence shall  
7 have his or her records and records of conviction expunged; and provided, that all outstanding  
8 court-imposed or court-related fees, fines, costs, assessments, charges, and/or any other monetary  
9 obligations have been paid, unless such amounts are reduced or waived by order of the court.

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

19           (c) Subject to subsection (a), a person may file a motion for the expungement of records

1 relating to a misdemeanor conviction after five (5) years from the date of the completion of his or  
2 her sentence.

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

6 (e) Any person who has been convicted of not more than six (6) felonies, and who has not  
7 been convicted of any felony which is considered a crime of violence, may file a motion for the  
8 expungement of any or all of those felonies in the court in which the conviction took place, provided  
9 that convictions for offenses under §§ 31-27-2 or 31-27-2.1 or convictions for offenses under  
10 chapter 29 of title 12 are not eligible for and may not be expunged.

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

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

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

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

24 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

29 (b) The court, after the hearing at which all relevant testimony and information shall be  
30 considered, may, in its discretion, order the expungement of the records of conviction, but not  
31 records of conviction of offenses under chapter 29 of title 12 or §§ 31-27-2 or 31-27-2.1, if the  
32 petitioner has been convicted of more than one misdemeanor, of the person filing the motion if it  
33 finds:

34 (1)(i) That in the five (5) years preceding the filing of the motion, if the conviction was for

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

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

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

19 (iv) That in the twenty (20) years preceding the filing of the motion, if the convictions were  
20 for not more than six (6) felonies, the petitioner has not been convicted nor arrested for any felony  
21 or misdemeanor, there are no criminal proceedings pending against the person, and they have  
22 exhibited good moral character; and

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

25 (c) If the court grants the motion, it shall, after payment by the petitioner of a one hundred  
26 dollar (\$100) fee to be paid to the court, order all records and records of conviction relating to the  
27 conviction expunged and all index and other references to it removed from public inspection. A  
28 copy of the order of the court shall be sent to any law enforcement agency and other agency known  
29 by either the petitioner, the department of the attorney general, or the court to have possession of  
30 the records. Compliance with the order shall be according to the terms specified by 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 (e) In cases of expungement sought pursuant to § 12-1.3-2(g), the court shall, after a hearing

1 at which it finds that all conditions of the original criminal sentence have been completed, and any  
2 and all fines, fees, and costs related to the conviction have been paid in full, order the expungement  
3 without cost to the petitioner. At the hearing, the court may require the petitioner to demonstrate  
4 that the prior criminal conviction would qualify as a decriminalized offense under current law. The  
5 demonstration may include, but is not limited to, an affidavit signed by the petitioner attesting to  
6 the fact that the prior conviction qualifies as a decriminalized offense under current Rhode Island  
7 law.

8 SECTION 2. This act shall take effect upon passage and shall apply to all convictions  
9 imposed before the effective date.

=====  
LC004512  
=====

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

\*\*\*

1           This act would allow those persons with multiple misdemeanor and multiple felony  
2 convictions to file a motion for expungement of all records and records of convictions, provided  
3 that no person who has been convicted of any felony which is considered a crime of violence shall  
4 have their records of conviction expunged and convictions for offenses under chapter 29 title 12  
5 (crimes of domestic violence) or under §§ 31-27-2 or 31-27-2.1 (driving under the influence or  
6 breathalyzer refusals) shall not be eligible for and may not be expunged. Motions may be brought  
7 after ten (10) years from the date of completion of their last sentence for misdemeanors and after  
8 twenty (20) years from the date of their last sentence for felonies.

9           This act would take effect upon passage and would apply to all convictions imposed before  
10 the effective date.

=====  
LC004512  
=====