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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

Introduced By: Representatives Williams, and Millea

Date Introduced: February 26, 2020

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 12-1-12 and 12-1-12.1 of the General Laws in Chapter 12-1
2 entitled "Identification and Apprehension of Criminals" are hereby amended to read as follows:

3 **12-1-12. Destruction or sealing of records of persons acquitted or otherwise**
4 **exonerated.**

5 (a)(1) Any fingerprint, photograph, physical measurements, or other record of
6 identification, heretofore or hereafter taken by or under the direction of the attorney general, the
7 superintendent of state police, the member or members of the police department of any city or
8 town or any other officer authorized by this chapter to take them, of a person under arrest, prior to
9 the final conviction of the person for the offense then charged, shall be destroyed by all offices or
10 departments having the custody or possession within sixty (60) days after there has been an
11 acquittal, dismissal, no true bill, no information, or the person has been otherwise exonerated
12 from the offense with which he or she is charged, and the clerk of court where the exoneration
13 has taken place shall, consistent with § 12-1-12.1, place under seal all records of the person in the
14 case including all records of the division of criminal identification established by § 12-1-4.

15 (2) ~~Any person previously convicted of any felony offense shall not be entitled to relief~~
16 ~~under this section except for those records in cases of acquittal after trial.~~

17 (3) Any person who shall violate any provision of this section shall be fined not
18 exceeding one hundred dollars (\$100).

1 (b) Requirements of this section shall also apply to persons detained by police, but not
2 arrested or charged with an offense, or to persons against whom charges have been filed by the
3 court, and the period of such filing has expired.

4 (c) Notwithstanding any other provision of this section, any person who has been charged
5 with a complaint for a crime involving domestic violence where the complaint was filed upon a
6 plea of not guilty, guilty or nolo contendere pursuant to § 12-10-12, must wait a period of three
7 (3) years from the date of filing before the records associated with the charge can be expunged,
8 sealed or otherwise destroyed.

9 **12-1-12.1. Motion for sealing of records of persons acquitted or otherwise**
10 **exonerated.**

11 (a) Any person who is acquitted or otherwise exonerated of all counts in a criminal case,
12 including, but not limited to, dismissal or filing of a no true bill or no information, may file a
13 motion for the sealing of his or her court records in the case, ~~provided, that no person who has~~
14 ~~been convicted of a felony shall be entitled to relief under this section except for those records in~~
15 ~~cases of acquittal after trial.~~

16 (b) Any person filing a motion for sealing his or her court records pursuant to this section
17 shall give notice of the hearing date set by the court to the department of the attorney general and
18 the police department that originally brought the charge against the person at least ten (10) days
19 prior to the hearing.

20 (c) If the court, after the hearing at which all relevant testimony and information shall be
21 considered, finds that the person is entitled to the sealing of the records, it shall order the sealing
22 of the court records of the person in that case.

23 (d) The clerk of the court shall, within forty-five (45) days of the order of the court
24 granting the motion, place under seal the court records in the case in which the acquittal,
25 dismissal, no true bill, no information or other exoneration has been entered.

26 (e) Notwithstanding any other provision of this section, in all cases involving a filing
27 subsequent to a plea of ~~not guilty~~, guilty, or nolo contendere to a charge of a crime involving
28 domestic violence, the court having jurisdiction over the case shall retain the records of the case
29 for a period of three (3) years from the date of filing. The records shall not be expunged or sealed
30 for a period of three (3) years from the date of the filing.

31 (f) 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 if~~ not claimed ~~at the time of~~ within forty-eight (48) hours from
33 the time of the sealing shall be escheated to the state's general treasury in accordance with chapter
34 12 of title 8.

1 SECTION 2. Sections 12-1.3-2, 12-1.3-3 and 12-1.3-4 of the General Laws in Chapter
2 12-1.3 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~~ related to that conviction expunged; and
8 provided, that all outstanding court-imposed or court-related fees, fines, costs, assessments,
9 charges, and/or any other monetary obligations have been paid, unless such amounts are reduced
10 or waived by order 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 offense constituting a crime of violence may file a motion for the expungement of any
14 or all of those misdemeanors by filing a motion in the court in which the convictions took place;
15 provided that convictions for offenses under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are
16 not eligible for and may not be expunged under this subsection; provided, however, that
17 convictions for offenses under chapter 29 of title 12 or §§ 31-27-2 or 31-27-2.1 shall not be
18 counted toward the number of relevant convictions under this subsection and further, provided,
19 that any person with only one conviction under chapter 29 of title 12 or §§ 31-27-2 or 31-27-2.1
20 shall be eligible to have their records expunged for those offenses five (5) years after the
21 conviction occurs and any person with no more than two (2) convictions for those offenses shall
22 be eligible to have those records expunged ten (10) years after those convictions occur if they
23 have not otherwise been arrested or convicted for any other offense subsequent to the last
24 conviction.

25 (c) Subject to subsection (a), a person may file a motion for the expungement of records
26 relating to a misdemeanor conviction after ~~five (5)~~ three (3) years from the date of the completion
27 of his or her sentence.

28 (d) Subject to subsection (a), a person may file a motion for the expungement of records
29 relating to a felony conviction after ~~ten (10)~~ five (5) years from the date of the completion of his
30 or her sentence. Notwithstanding § 12-1.3-1(3) ("first offender"), any person who has been
31 convicted of more than one felony, but fewer than six (6) felonies, and has not been convicted of
32 a felony offense constituting a crime of violence, may file a motion for the expungement of any
33 or all of those felonies by filing a motion in the court in which the convictions took place;
34 provided, that convictions for felony offenses under chapter 29 of title 12, § 31-27-2 or § 31-27-

1 [2.1 are not eligible for and may not be expunged under this subsection.](#)

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

5 (f) Subject to subsection (b) of this section, a person may file a motion for the
6 expungement of records relating to misdemeanor convictions after ~~ten (10)~~ [three \(3\)](#) years from
7 the date of the completion of their last sentence. [Further subject to subsection \(b\) of this section, a
8 person may file a motion for the expungement of records relating to felony convictions after ten
9 \(10\) years from the date of 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. [The court shall expunge
14 any records of conviction for any offense that has been decriminalized.](#)

15 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

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

23 (1)(i) That in the ~~five (5)~~ [three \(3\)](#) years preceding the filing of the motion, if the
24 conviction was for a misdemeanor, or in the ~~ten (10)~~ [five \(5\)](#) years preceding the filing of the
25 motion, if the conviction was for a felony, the petitioner has not been convicted nor arrested for
26 any felony or misdemeanor; there are no criminal proceedings pending against the person; that
27 the person does not owe any outstanding court-imposed or court-related fees, fines, costs,
28 assessments, or charges, unless such amounts are reduced or waived by order of the court, and he
29 or she has exhibited good moral character;

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

1 ~~of a crime of violence shall have their records relating to a deferred sentence expunged~~; or

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

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

11 (c) If the court grants the motion, it shall, after payment by the petitioner of a one
12 hundred dollar (\$100) fee to be paid to the court, order all records and records of conviction
13 relating to the conviction expunged and all index and other references to it removed from public
14 inspection. A copy of the order of the court shall be sent to any law enforcement agency and other
15 agency known by either the petitioner, the department of the attorney general, or the court to have
16 possession of the record including, but not limited to, the department of probation and parole.
17 Compliance with the order shall be according to the terms specified by the court.

18 (d) The defendant shall be advised at the hearing that any and all bail money relating to a
19 case that remains on deposit and is not claimed at the time of expungement shall be escheated to
20 the state's general treasury in accordance with chapter 12 of title 8; provided, however, that any
21 fees due pursuant to subsection (c) of this section, shall be paid to the court from the bail money.

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

30 **12-1.3-4. Effect of expungement of records -- Access to expunged records --**
31 **Wrongful disclosure.**

32 (a) Any person having his or her record expunged shall be released from all penalties and
33 disabilities resulting from the crime of which he or she had been convicted, ~~except, upon~~
34 ~~conviction of any subsequent crime, the expunged conviction may be considered as a prior~~

1 ~~conviction in determining the sentence to be imposed.~~

2 (b) In any application for employment, license, or other civil right or privilege, or any
3 appearance as a witness, a person whose conviction of a crime has been expunged pursuant to this
4 chapter may state that he or she has never been convicted of the crime; provided, that if the
5 person is an applicant for a law enforcement agency position, for admission to the bar of any
6 court, an applicant for a teaching certificate, under chapter 11 of title 16, a coaching certificate
7 under § 16-11.1-1, or the operator or employee of an early childhood education facility pursuant
8 to chapter 48.1 of title 16, the person shall disclose the fact of a conviction.

9 (c) Whenever the records of any conviction and/or probation of an individual for the
10 commission of a crime have been expunged under the provisions of this chapter, any custodian of
11 the records of conviction relating to that crime shall not disclose the existence of the records upon
12 inquiry from any source unless the inquiry is that of the individual whose record was expunged,
13 ~~that of a sentencing court following the conviction of the individual for the commission of a~~
14 ~~crime,~~ or that of a bar admission, character and fitness, or disciplinary committee, board, or
15 agency, or court which is considering a bar admission, character and fitness, or disciplinary
16 matter, or that of the commissioner of elementary and secondary education, or that of any law
17 enforcement agency when the nature and character of the offense with which an individual is to
18 be charged would be affected by virtue of the person having been previously convicted of the
19 same offense.

20 (d) The custodian of any records which have been expunged pursuant to the provisions of
21 this chapter shall only release or allow access to those records for the purposes specified in
22 subsections (b) or (c) of this section or by order of a court. Any agency and/or person who
23 willfully refuses to carry out the expungement of the records of conviction pursuant to § 12-1.3-2,
24 or this section or willfully releases or willfully allows access to records of conviction, knowing
25 them to have been expunged, shall be civilly liable.

26 SECTION 3. 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 make any acquittal or dismissal of any offense eligible for sealing under
2 chapter 1 of title 12, would lower the time limitations for certain expungements and amend the
3 eligibility requirements for certain expungements.

4 This act would take effect upon passage.

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