

2021 -- H 5084

LC000573

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

Introduced By: Representative Jason Knight

Date Introduced: January 22, 2021

Referred To: House Judiciary

(Attorney General)

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 entitled
2 "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 town
8 or any other officer authorized by this chapter to take them, of a person under arrest, prior to the
9 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 from
12 the offense with which he or she is charged, and the clerk of court where the exoneration has taken
13 place shall, consistent with § 12-1-12.1, place under seal all records of the person in the case
14 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 exceeding
18 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 (3)
7 years from the date of filing before the records associated with the charge can be expunged, sealed
8 or otherwise destroyed.

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

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

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

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

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

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

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

33 SECTION 2. Section 12-1.3-3 of the General Laws in Chapter 12-1.3 entitled
34 "Expungement of Criminal Records" is hereby amended to read as follows:

1 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

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

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

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

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

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

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

1 the records. Compliance with the order shall be according to the terms specified by the court.

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

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

13 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 allow for the sealing of records pertaining to cases for which a person is
2 acquitted or otherwise exonerated from a charged offense and eliminates the one hundred dollar
3 (\$100) fee for the expungement of a criminal record.

4 This act would take effect upon passage.

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