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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF  
CRIMINALS

Introduced By: Representatives Williams, Knight, Biah, Giraldo, Morales, and Batista

Date Introduced: January 29, 2021

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

34 SECTION 2. Sections 12-1.3-2, 12-1.3-3 and 12-1.3-4 of the General Laws in Chapter 12-

1 1.3 entitled "Expungement of Criminal Records" are hereby amended to read as follows:

2 **12-1.3-2. Motion for expungement.**

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

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

26 (d) Subject to subsection (a), a person may file a motion for the expungement of records  
27 relating to a felony conviction after ~~ten (10)~~ five (5) years from the date of the completion of his or  
28 her sentence. Notwithstanding § 12-1.3-1(3) ("first offender"), any person who has been convicted  
29 of more than one felony, but fewer than six (6) felonies, and has not been convicted of a felony  
30 offense constituting a crime of violence, may file a motion for the expungement of any or all of  
31 those felonies by filing a motion in the court in which the convictions took place; provided, that  
32 convictions for felony offenses under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are not eligible  
33 for and may not be expunged under this subsection.

34 (e) Subject to § 12-19-19(c), and without regard to subsections (a) through (c) of this

1 section, a person may file a motion for the expungement of records relating to a deferred sentence  
2 upon its completion, after which the court will hold a hearing on the motion.

3 (f) Subject to subsection (b) of this section, a person may file a motion for the expungement  
4 of records relating to misdemeanor convictions after ~~ten (10)~~ three (3) years from the date of the  
5 completion of their last sentence. Further subject to subsection (b) of this section, a person may file  
6 a motion for the expungement of records relating to felony convictions after ten (10) years from  
7 the date of the completion of their last sentence.

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

13 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

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

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

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

34 (iii) Subject only to §§ 12-1.3-2(b) and (f), that in the ~~ten (10)~~ three (3) years preceding the

1 filing of the motion, if the convictions were for multiple misdemeanors, or ten (10) years if the  
2 convictions were for multiple felonies, the petitioner has not been convicted nor arrested for any  
3 felony or misdemeanor; there are no criminal proceedings pending against the person; and they  
4 have exhibited good moral character; and, provided, subject to § 12-1.3-2 (b), (d) and (f), that  
5 convictions for offenses under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are not eligible and  
6 may not be 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 hundred  
10 dollar (\$100) fee to be paid to the court, order all records and records of conviction relating to the  
11 conviction expunged and all index and other references to it removed from public inspection. A  
12 copy of the order of the court shall be sent to any law enforcement agency and other agency known  
13 by either the petitioner, the department of the attorney general, or the court to have possession of  
14 the record including, but not limited to, the department of probation and parole. Compliance with  
15 the order shall be according to the terms specified by 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; provided, however, that any  
19 fees due pursuant to subsection (c) of this section, shall be paid to the court from the bail money.

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

28 **12-1.3-4. Effect of expungement of records -- Access to expunged records -- Wrongful**  
29 **disclosure.**

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

34 (b) In any application for employment, license, or other civil right or privilege, or any

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

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

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

23 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

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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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