

2021 -- H 5636

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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 -- EXPUNGEMENT OF CRIMINAL RECORDS--
IDENTIFICATION AND APPREHENSION OF CRIMINALS

Introduced By: Representatives Knight, Speakman, Felix, and Batista

Date Introduced: February 22, 2021

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; provided that convictions for offenses
14 under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are not eligible for and may not be expunged
15 under this subsection.

16 (c) Subject to subsection (a), a person may file a motion for the expungement of records
17 relating to a misdemeanor conviction after five (5) years from the date of the completion of his or
18 her sentence.

1 (d) Subject to subsection (a), a person may file a motion for the expungement of records
2 relating to a felony conviction after ten (10) years from the date of the completion of his or her
3 sentence; provided, however, that any person convicted of an offense constituting simple
4 possession of a controlled substance under § 21-28-4.01 may file a motion for expungement of
5 records after five (5) years.

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

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

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

16 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.**

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

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

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

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

1 he or she has established good moral character. Provided, that no person who has been convicted
2 of a crime of violence shall have their records relating to a deferred sentence expunged; or

3 (iii) Subject only to §§ 12-1.3-2(b) and (f), that in the ten (10) years preceding the filing of
4 the motion, if the convictions were for multiple misdemeanors, the petitioner has not been
5 convicted nor arrested for any felony or misdemeanor; there are no criminal proceedings pending
6 against the person; and they have exhibited good moral character; and, provided that convictions
7 for offenses under chapter 29 of title 12, § 31-27-2 or § 31-27-2.1 are not eligible and may not be
8 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 hundred~~
12 ~~dollar (\$100) fee to be paid to the court,~~ upon no costs to the petitioner, order all records and records
13 of conviction relating to the conviction expunged and all index and other references to it removed
14 from public inspection. A copy of the order of the court shall be sent to any law enforcement agency
15 and other agency known by either the petitioner, the department of the attorney general, or the court
16 to have possession of the records. Compliance with the order shall be according to the terms
17 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.

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

29 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO CRIMINAL PROCEDURE -- EXPUNGEMENT OF CRIMINAL RECORDS--
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1 This act would make those persons convicted of felony simple possession of a controlled
2 substance eligible for expungement five (5) years after completion of their sentence. The act would
3 also repeal the requirement that those seeking expungement pay a fee to the court.

4 This act would take effect upon passage.

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