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LC001422

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO CRIMINAL OFFENSES -- GENERAL PROVISIONS

Introduced By: Representatives Batista, Knight, Potter, Cruz, Alzate, and Felix

Date Introduced: February 15, 2023

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 11-1-2 of the General Laws in Chapter 11-1 entitled "General
2 Provisions" is hereby amended to read as follows:

3 **11-1-2. Felony, misdemeanor — Petty misdemeanor, and violation distinguished.**

4 [\(a\)](#) Unless otherwise provided, any criminal offense which at any given time may be
5 punished by imprisonment for a term of more than one year, or by a fine of more than one thousand
6 dollars (\$1,000), is declared to be a felony; any criminal offense which may be punishable by
7 imprisonment for a term not exceeding one year, or by a fine of not more than one thousand dollars
8 (\$1,000), or both, is declared to be a misdemeanor; any criminal offense which may be punishable
9 by imprisonment for a term not exceeding six (6) months or by a fine of not more than five hundred
10 dollars (\$500), or both, is declared to be a petty misdemeanor; and any offense which may be
11 punished by only a fine of not more than five hundred dollars (\$500) is declared to be a violation.

12 [\(b\) Any criminal case which is disposed with a sentence limited to the imposition of a fine](#)
13 [only, shall not constitute a criminal conviction for any purpose.](#)

14 SECTION 2. Section 12-1.3-1 of the General Laws in Chapter 12-1.3 entitled
15 "Expungement of Criminal Records" is hereby amended to read as follows:

16 **12-1.3-1. Definitions.**

17 For purposes of this chapter only, the following definitions apply:

18 (1) "Crime of violence" includes murder, manslaughter, first degree arson, kidnapping with
19 intent to extort, robbery, larceny from the person, first degree sexual assault, second degree sexual

1 assault, first and second degree child molestation, assault with intent to murder, assault with intent
2 to rob, assault with intent to commit first degree sexual assault, burglary, and entering a dwelling
3 house with intent to commit murder, robbery, sexual assault, or larceny.

4 (2) "Expungement of records and records of conviction" means the sealing and retention
5 of all records of a conviction and/or probation and the removal from active files of all records and
6 information relating to conviction and/or probation. For the purposes of expungements under this
7 section, a criminal case which is disposed with the imposition of a fine only, shall not constitute a
8 criminal conviction; provided, however, any such case shall be eligible for expungement pursuant
9 to § 12-1.3-2.

10 (3) "First offender" means a person who has been convicted of a felony offense or a
11 misdemeanor offense, and who has not been previously convicted of or placed on probation for a
12 felony or a misdemeanor and against whom there is no criminal proceeding pending in any court.

13 (4) "Law enforcement agency" means a state police organization of this or any other state,
14 the enforcement division of the department of environmental management, the office of the state
15 fire marshal, the capitol police, a law enforcement agency of the federal government, and any
16 agency, department, or bureau of the United States government which has as one of its functions
17 the gathering of intelligence data.

18 (5) "Records" and "records of conviction and/or probation" include all court records, all
19 records in the possession of any state or local police department, the bureau of criminal
20 identification and the probation department, including, but not limited to, any fingerprints,
21 photographs, physical measurements, or other records of identification. The terms "records" and
22 "records of conviction, and/or probation" do not include the records and files of the department of
23 attorney general which are not kept by the bureau of criminal identification in the ordinary course
24 of the bureau's business.

25 SECTION 3. Section 12-18-3 of the General Laws in Chapter 12-18 entitled "Probation"
26 is hereby amended to read as follows:

27 **12-18-3. Plea of nolo contendere followed by probation — Effect.**

28 (a) Whenever any person shall be arraigned before the district court or superior court and
29 shall plead nolo contendere, and the court places the person on probation pursuant to § 12-18-1,
30 then ~~upon the completion of~~ during the probationary period and after its completion, and absent a
31 specific finding by the hearing judge that the defendant violated terms of their probation or by a
32 finding that they committed a new offense, as charged, and not a finding that the defendant failed
33 to keep the peace and be of good behavior, ~~violation of the terms of the probation,~~ the plea and
34 probation shall not constitute a conviction for any purpose. Evidence of a plea of nolo contendere

1 followed by a period of probation, completed without violation of the terms of the probation, may
2 not be introduced in any court proceeding, except [that a period of probation with or without a](#)
3 [violation of the terms of probation, shall constitute a prior conviction for purposes of enhancing a](#)
4 [sentence for any offense that mandates enhanced sentences for subsequent convictions, and](#) that
5 records may be furnished to a sentencing court following the conviction of an individual for a crime
6 committed subsequent to the successful completion of probation on the prior offense.

7 (b) This section shall not apply to any person who is sentenced to serve a term in the adult
8 correctional institutions or who is given a suspended or deferred sentence in addition to probation.

9 (c) The provisions of this section shall not apply to persons making applications for the
10 purchase of a firearm, or to persons making applications for permission to carry a concealable
11 weapon, if the crime for which the plea was entered was a crime of violence as defined in § 11-47-
12 2 or the plea was entered pursuant to chapter 28 of title 21. In these cases a plea of nolo contendere
13 followed by probation shall be deemed a conviction for the purposes stated in this subsection.

14 SECTION 4. Section 12-19-8 of the General Laws in Chapter 12-19 entitled "Sentence and
15 Execution" is hereby amended to read as follows:

16 **12-19-8. Suspension of sentence and probation by superior or district court.**

17 (a) Application. Except where the suspension of sentence shall otherwise be prohibited by
18 law, and subject to the purposes and limits imposed by this section and § 12-19-8.1, whenever any
19 defendant shall appear for sentence before the superior or district court, the court may impose a
20 sentence and suspend the execution of the sentence, in whole or in part, or place the defendant on
21 probation without the imposition of a suspended sentence. The suspension shall place the defendant
22 on probation for the time of probation that the court may fix and pursuant to the terms and
23 conditions set by § 12-19-8.1. [Pursuant to § 12-18-3, no period of probation, absent the imposition](#)
24 [of a period of imprisonment, suspended or not, does not constitute a conviction.](#)

25 (b) Duration. The period of probation for a felony shall be set for a period of time as
26 required by law, or in accordance with judicial sentencing benchmarks. The period of probation for
27 a misdemeanor, where no sentence is imposed or where sentence is entirely suspended, may be for
28 any period up to the maximum time of sentence provided by applicable statutes. Where sentence is
29 imposed and suspended in part, the term ordered to be served and the period of probation together
30 shall not exceed the maximum time of sentence provided by applicable statutes.

31 (c) [Deleted by P.L. 2017, ch. 345, § 1 and P.L. 2017, ch. 351, § 1].

32 SECTION 5. This act shall take effect upon passage.

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO CRIMINAL OFFENSES -- GENERAL PROVISIONS

1 This act would provide that the imposition of a fine only in any criminal case shall not
2 constitute a conviction under Rhode Island law and that the imposition of a term of probation,
3 without a sentence of imprisonment, suspended or not, shall not constitute a conviction, absent a
4 specific finding by a judge at a violation hearing, that the defendant committed the offense(s) which
5 are the basis for the probation violation. It would also provide that a period of probation would
6 constitute a conviction for those offenses that mandate enhanced penalties for subsequent offenses.

7 This act would take effect upon passage.

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