

2016 -- S 2064

=====  
LC003166  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

—————  
A N A C T

RELATING TO CRIMINAL PROCEDURE-IDENTIFICATION AND APPREHENSION OF  
CRIMINALS

Introduced By: Senators Picard, and Metts

Date Introduced: January 13, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 12-1.3-1, 12-1.3-2 and 12-1.3-3 of the General Laws in Chapter  
2 12-1.3 entitled "Expungement of Criminal Records" are hereby amended to read as follows:

3 **12-1.3-1. Definitions.** -- For purposes of this chapter only, the following definitions  
4 apply:

5 (1) "Crime of violence" includes murder, manslaughter, first degree arson, kidnapping  
6 with intent to extort, robbery, larceny from the person, first degree sexual assault, second degree  
7 sexual assault, first and second degree child molestation, assault with intent to murder, assault  
8 with intent to rob, assault with intent to commit first degree sexual assault, burglary, and entering  
9 a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.

10 (2) "Expungement of records and records of conviction" means the sealing and retention  
11 of all records of a conviction and/or probation and the removal from active files of all records and  
12 information relating to conviction and/or probation.

13 (3) ~~"First offender"~~ "Qualified offender" means a person who has been convicted of no  
14 more than two (2) felony offenses or two (2) misdemeanor offenses or a combination of one  
15 felony and one misdemeanor offense, ~~a felony offense or a misdemeanor offense, and who has~~  
16 ~~not been previously convicted of or placed on probation for a felony or a misdemeanor~~ and  
17 against whom there is no criminal proceeding pending in any court.

18 (4) "Law enforcement agency" means a state police organization of this or any other

1 state, the enforcement division of the department of environmental management, the office of the  
2 state fire marshal, the capitol police, a law enforcement agency of the federal government, and  
3 any agency, department, or bureau of the United States government which has as one of its  
4 functions the gathering of intelligence data.

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

12 **12-1.3-2. Motion for expungement.** -- (a) Any person who is a ~~first~~ qualified offender  
13 may file a motion for the expungement of all records and records of conviction for a felony or  
14 misdemeanor by filing a motion in the court in which the conviction took place; provided, that no  
15 person who has been convicted of a crime of violence shall have his or her records and records of  
16 conviction expunged; and provided, that all outstanding court-imposed or court-related fees,  
17 fines, costs, assessments, charges, and/or any other monetary obligations have been paid, unless  
18 such amounts are reduced or waived by order of the court.

19 (b) Subject to subsection (a) of this section, a person may file a motion for the  
20 expungement of records relating to a misdemeanor conviction after five (5) years from the date of  
21 the completion of his or her sentence.

22 (c) Subject to subsection (a) of this section, a person may file a motion for the  
23 expungement of records relating to a felony conviction after ten (10) years from the date of the  
24 completion of his or her sentence.

25 **12-1.3-3. Motion for expungement -- Notice -- Hearing -- Criteria for granting.** -- (a)  
26 Any person filing a motion for expungement of the records of his or her conviction pursuant to §  
27 12-1.3-2 shall give notice of the hearing date set by the court to the department of the attorney  
28 general and the police department that originally brought the charge against the person at least ten  
29 (10) days prior to that date.

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

33 (1) That in the five (5) years preceding the filing of the motion, if the ~~conviction~~  
34 convictions ~~was for a misdemeanor~~ were for misdemeanors, or in the ten (10) years preceding the

1 filing of the motion if the ~~conviction~~ convictions ~~was~~ were for felonies or a combination of a  
2 felony and a misdemeanor ~~a felony~~, the petitioner has not been convicted nor arrested for any  
3 other felony or misdemeanor; there are no criminal proceedings pending against the person; that  
4 the person does not owe any outstanding court-imposed or court-related fees, fines, costs,  
5 assessments, or charges, unless such amounts are reduced or waived by order of the court, and he  
6 or she has exhibited good moral character;

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  
10 hundred dollar (\$100) fee to be paid to the court, order all records and records of conviction  
11 relating to the conviction expunged and all index and other references to it removed from public  
12 inspection. A copy of the order of the court shall be sent to any law enforcement agency and other  
13 agency known by either the petitioner, the department of the attorney general, or the court to have  
14 possession of the records. Compliance with the order shall be according to the terms specified by  
15 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.

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

=====  
LC003166  
=====

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 individuals with two (2) or less convictions, regardless of whether  
2 the convictions were for felonies or misdemeanors, or a combination of each, eligible to have  
3 their criminal records expunged.

4           This act would take effect upon passage.

=====  
LC003166  
=====