

The Just Criminal Justice Group, LLC



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TESTIMONY IN SUPPORT OF 2024—S 2227

- Under the Rhode Island law, expungement is governed by a comprehensive statutory scheme made up of five (5) sub sections creating six (6) different ways in which to get a criminal record expunged in whole or in part. RIGL § 12-1.3-1 to 5. The attached expungement “cheat sheet”, recently revised in light of legislative changes culminating in 2023 is a practical summary of the Rhode Island expungement law.¹
- As a comprehensive statutory-scheme it has a definitional section, RIGL § 12-1.3-1. These definitions control and apply throughout the entire expungement statute and nowhere else.
- The technical modification of the definition of “misdemeanor” honors and effectuates legislative changes. These changes reflect the most recent societal norms and the legislature’s recognition and re-consideration of the seriousness and severity of certain criminal offenses. It simply makes sense to have the most recent iteration of the distinctions between felonies and misdemeanors govern a defendant’s eligibility for expungement rather than what was in place at the time the defendant was sentenced, which may have been years and perhaps decades prior to the request for an expungement.

QUESTIONS? COMMENTS? CONCERNS?

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¹ This “cheat sheet” was recently published in *Gontarz, Hurst, et al, A Practical Guide to Superior Court Practice in Rhode Island (Massachusetts Continuing Legal Education, Inc., December, 2023) (Chapter 22, Checklist 22.3)*; *Murphy, et al, A Practical Guide to Trying DUI Cases in Rhode Island (Massachusetts Continuing Legal Education, Inc., January, 2024) (Appendix I: Trial Notebook Checklists, Checklist A.4)*

CHEAT SHEET / EXPUNGEMENT: Who, When, Why & How?

<u>Step #1. WHO & WHEN?</u>	<u>Step #2. WHY?</u>	<u>Step #3. HOW?</u>
<p align="center"><u>WHO?</u></p> <p><i>First Offenders (RIGL Sec. 12-1.3-2(a))</i></p> <p><u>Definition:</u> Person convicted of a felony offense (excluding "crimes of violence") or a misdemeanor offense; not previously convicted of or placed on probation for a felony or a misdemeanor; against whom there is no criminal proceeding pending in any court; and all court costs fines, and fees have been paid.</p> <p align="center"><u>WHEN?</u></p> <p><u>Misdemeanors:</u> Five (5) years after completion of sentence</p> <p><u>Felony:</u> Ten (10) years after completion of sentence</p>	<p align="center"><u>Eligibility Criteria [Discretionary & Otherwise]:</u></p> <p>In the five (5) or ten (10) years since completion of sentence petitioner</p> <ol style="list-style-type: none"> Has not been convicted nor arrested for any felony or misdemeanor Has no pending criminal proceedings Does not owe any court costs, fines, or fees or they have been waived by the court; and Has exhibited good moral character Petitioner's rehabilitation has been attained Expungement consistent with public interest 	<ol style="list-style-type: none"> Ten (10) days' notice to the AG & police dept. that brought charge. \$100-fee-to effectuate expungement order. <p>Fee repealed by 2021 RIPL Chapters 141, 142.</p> <ol style="list-style-type: none"> Court and/or petitioner must circulate copy of the expungement order to AG and any law enforcement agency known to have records
<p align="center"><u>WHO?</u></p> <p><i>Multiple Misdemeanants (RIGL Sec. 12-1.3-2(b))</i></p> <p><u>Definition:</u> Person convicted of more than one (1) but fewer than six (6) misdemeanors; hasn't been convicted of a felony; and isn't a DWI or DV offense.</p> <p align="center"><u>WHEN?</u></p> <p>Ten (10) years After completion of final sentence.</p>	<p align="center"><u>Eligibility Criteria [Discretionary & Otherwise]:</u></p> <p>Since completion of the final sentence petitioner</p> <ol style="list-style-type: none"> Has not been convicted nor arrested for any felony Has no criminal proceedings pending; and Has exhibited good moral character Petitioner's rehabilitation has been attained Expungement consistent with public interest 	<p align="center">Same as</p> <p align="center"><u>"First Offenders"</u></p>

<p><u>Step #1.</u> <u>WHO & WHEN?</u></p>	<p><u>Step #2. WHY?</u></p>	<p><u>Step #3. HOW?</u></p>
<p>WHO?</p> <p>Was Subject to a Deferred Sentence? (RIGL Sec. 12-1.3-2(e))</p> <p>Excluding: "Crimes of violence"</p> <p>WHEN?</p> <p>Immediately Upon successful completion of the deferred sentence</p>	<p>Eligibility Criteria [Discretionary & Otherwise]:</p> <p><u>Pursuant to the deferred sentence petitioner:</u></p> <ol style="list-style-type: none"> 1) Has complied with all of the terms and conditions of the agreement including, but not limited to, the payment in full of any court-ordered fines, fees, costs, assessments, and restitution to victims of crimes; 2) There are no criminal proceedings pending against the person; and 3) <u>He or she has established good moral character.</u> 4) <u>Petitioner's rehabilitation has been attained</u> 5) <u>Expungement consistent with public interest</u> 	<p>Same as</p> <p>"<u>First Offenders</u>"</p> <p>&</p> <p>"<u>Multiple Misdemeanants</u>"</p>
<p>WHO?</p> <p>Convicted of Offense Now Decriminalized? (RIGL Sec. 12-1.3-2(g))</p> <p>WHEN?</p> <p>Anytime Subsequent to conviction and decriminalization.</p>	<p>Eligibility Criteria [Discretionary & Otherwise]:</p> <ol style="list-style-type: none"> 1) All conditions of the original criminal sentence have been completed 2) All fines, fees, and costs related to the conviction have been paid in full 3) <i>Court may require the petitioner to demonstrate that the prior criminal conviction would qualify as a decriminalized offense under current law; may include an affidavit signed by the petitioner attesting to the fact that the prior conviction qualifies as a decriminalized offense under current law</i> 4) Although a powerful statutory construction argument can be made that the discretionary factors (petitioner's rehabilitation and public interest) do not apply some judges still require they be met. 	<p>Same as</p> <p>"<u>First Offenders</u>"</p> <p>&</p> <p>"<u>Multiple Misdemeanants</u>"</p>

<p><u>WHO & WHEN?</u></p> <p><u>Prostitution & Soliciting?</u> (RIGL § 11-67.1-17)</p> <ul style="list-style-type: none"> • One year post sentence <u>OR</u> • After conviction vacated by "victim" (of sex traffic) 	<p><u>Eligibility Criteria</u> <u>[Discretionary & Otherwise]:</u></p> <ol style="list-style-type: none"> 1) <u>Petitioner's rehabilitation has been attained</u> 2) <u>Expungement consistent with public interest</u> 3) <u>Vacate Conviction: Either crime committed as a direct result of defendant being a "victim" of sex traffic. Individual convicted of prostitution or solicitation to commit a sexual act committed as a victim, may apply by motion to the court having jurisdiction over the offense to vacate the conviction and seal or expunge the record)</u> 	<p>Same as <u>"First Offenders"</u></p> <p>&</p> <p><u>"Multiple Misdemeanants"</u></p>
<p><u>WHO?</u></p> <p><u>Marijuana</u> (RIGL Sec. 12-1.3-5)</p> <p>Anyone subject to a prior civil violation, misdemeanor or felony conviction for possession only of a marijuana offense that has been decriminalized subsequent to the date of conviction.</p> <p><u>WHEN?</u></p> <ul style="list-style-type: none"> • Automatic pursuant to procedures and a timeline to be determined by the chief justice; provided however, that all eligible records shall be expunged before July 1, 2024. Chief justice may provide for an expedited procedure and shall require a written request by the person requesting expungement using a timeline to be determined by the chief justice. • Alternatively person seeking relief may apply immediately using procedures already in place. 	<p><u>Eligibility Criteria</u> <u>[Discretionary & Otherwise]:</u></p> <ol style="list-style-type: none"> 1) Similar to expungement of convictions for offenses that have been decriminalized under prior expungement law. <u>Potential disqualifiers and discretionary factors need not be applied and considered before granting a motion to expunge. R.I. Gen. Laws Section 12-1.3-5(a), (g), (h)</u> (expungement shall be granted notwithstanding the other provisions of expungement law containing disqualifiers like ineligible counts in the charging instrument; prior arrests, convictions, or civil adjudications including convictions for crimes of violence; pending criminal proceedings; and if incarceration results any outstanding fees, fines, costs, assessments or charges related to the eligible conviction or civil adjudication shall be waived - nothing in this section shall be construed to restrict or modify a person's right to have their records expunged, except as otherwise may be provided in this chapter) 2) Conviction is for possession of marijuana weighing 2.0 oz. or less. 3) In the absence of weight presumption that the marijuana weighed 2.0 oz. or less. 4) <u>Statutory Construction:</u> Creative readings of RICA's other provisions relating to regulation and taxation of marijuana may allow for creative arguments that expungement is not limited to simple possession of 2 oz. or less. See, 21-28-4.01 (a)(1) (lawful v. unlawful possession); 21-28.11-22 (personal use of cannabis); 21-28.11-29 (prohibited activities) 	<p>Same as <u>"First Offenders"</u></p> <p>&</p> <p><u>"Multiple Misdemeanants"</u></p> <p>"Automatic": TBD but prior to 7/1/24. "Reasonable Time": Court is required to send a copy of the order to RIAG / BCI, police, or other entity known to have record.</p> <p>© Michael A. DiLauro, Esq. – December, 2018. Revised, February, 2019; July, 2021; December, 2022. Thank you to Assistant Public Defender Emmett Hardiman whose counsel, assistance, and ground-breaking work in the community assisting our clients were indispensable in the preparation of these materials.</p>