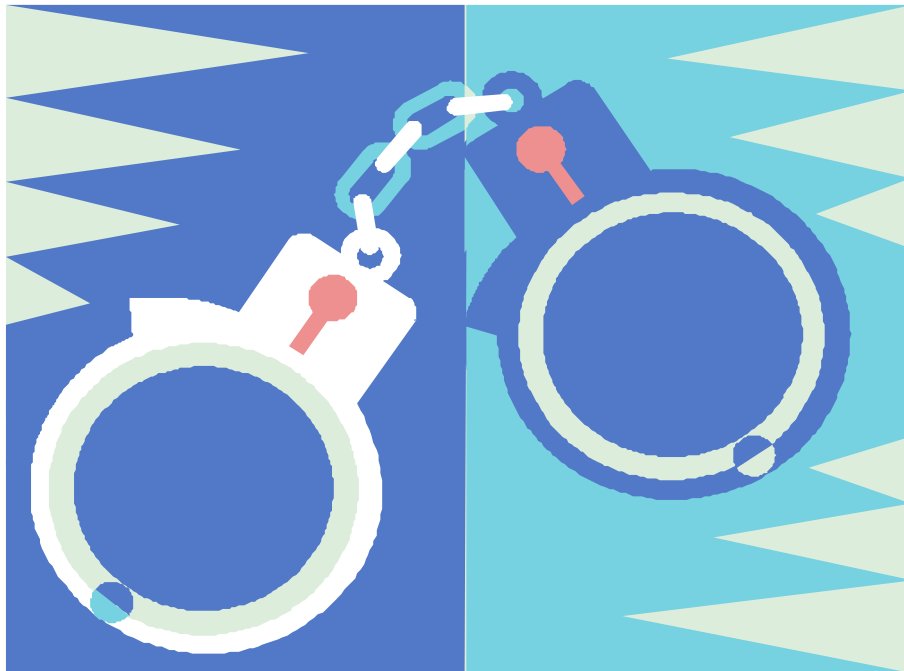


**RHODE ISLAND
DISABILITY LAW CENTER,
INC.**

**CRIMINAL
BACKGROUND
CHECKS AND
EXPUNGEMENT
IN RHODE ISLAND**



ARREST AND EMPLOYMENT

It is against the law for an employer to inquire about whether you have been arrested and/or charged with a crime.¹



- This is true whether the inquiry is verbal or in writing.²
- This is also true whether the employer inquires from you or a third party.
- This **does not** apply to employment with law enforcement agencies or positions related to law enforcement agencies.³

¹ R.I. Gen. Laws § 28-5-7(7) (2006).

² See Id.

³ See Id.

CONVICTION AND EMPLOYMENT

An employer can ask you whether you have been convicted of a crime.⁴

- Not all criminal proceedings end with a conviction.
- A conviction means: a judge in a criminal court made you pay a fine (not just court costs) and/or you received jail time (actual or suspended sentence).
- A plea of “nolo contendere” with probation is not a conviction in Rhode Island.⁵ But, a plea of “nolo contendere” with a deferred sentence is a conviction in Rhode Island.⁶



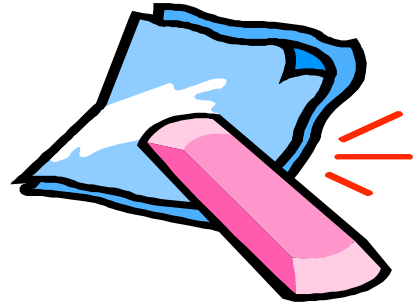
⁴ See Id. (“[nothing] in this subdivision shall prevent an employer from inquiring whether the applicant has ever been convicted of any crime.”).

⁵ R.I. Gen. Laws § 12-18-3 (2006).

⁶ See State v. Briggs, 934 A.2d 811 (R.I. 2007).

EXPUNGEMENT OF A CONVICTION

If you are a “first offender” you may expunge, or erase, your record of a conviction for a felony or misdemeanor.⁷



A “first offender” is an offender that has not been convicted or placed on probation before and does not have any pending criminal proceeding in any court; in other words, this means you have only been charged with only one criminal offense.⁸

- It is a good idea to learn whether you qualify as a “first offender” before you begin the process of expungement:
 - For a small fee you may obtain a criminal record check from the Rhode Island Bureau of Criminal Identification located at the Rhode

⁷ R.I. Gen. Laws § 12-1.3-2(a) (2006).

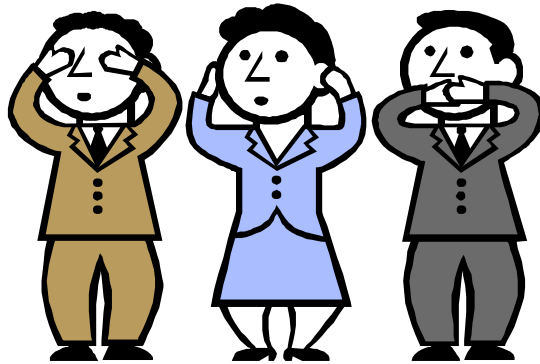
⁸ R.I. Gen. Laws § 12-1.3-1(3) (2006). If you have previously expunged your record you are not considered a “first offender” for purposes of expunging another conviction or probation. See State v. Badessa, 869 A.2d 61 (R.I. 2005).

Island Attorney General's Office on 150 South Main Street in Providence.

- Also, if you have the ability to access the internet, the Rhode Island Supreme Court's webpage contains a search engine where you can look up your criminal record for free.⁹

The webpage is: <http://www.courts.state.ri.us/>

- Once your record is expunged you may tell an employer that you were never convicted of a crime.¹⁰
- Also, once your record is expunged the person that has the records cannot tell anyone of the existence of those records unless the law says they can.¹¹



⁹ It should be noted that this webpage contains a summary of all court information regarding criminal charges even those that may not have resulted in a conviction; therefore, this information may not always accurately reflect the charges or the final disposition of charges.

¹⁰ See R.I. Gen. Laws § 12-1.3-4 (2006).

¹¹ Id. at § 12-1.3-4(c).

- But, you **cannot** expunge your record if you were convicted of a “crime of violence”.¹²
- And, you **must** disclose your conviction, even if expunged, if you apply for a position with:

1. a law enforcement agency;



2. admission to the bar of any court;

3. apply for a teaching certificate;

4. apply for a coaching certificate; or,



5. an early childhood education facility.¹³

¹² R.I. Gen. Laws § 12-1.3-2(a) (2006). See also R.I. Gen. Laws § 12-1.3-1(1) (2006) (A “‘crime of violence’ includes murder, manslaughter, first degree arson, kidnapping with intent to extort, robbery, larceny from the person, first degree sexual assault, second degree sexual assault, first and second degree child molestation, assault with intent to murder, assault with intent to rob, assault with intent to commit first degree sexual assault, burglary, and entering a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.”).

¹³ R.I. Gen. Laws § 12-1.3-4(b) (2006).

HOW TO EXPUNGE YOUR RECORD:

- To expunge your record you must file a motion in the court in which the conviction took place.¹⁴
- A motion is a written request that asks the court to erase your conviction.
 - You may want to consult an attorney to help you with this motion because court procedure can be complex.
 - If you wish to proceed with a motion by yourself, the Rhode Island Superior Court and District Court should have a particular form that needs to be filled out by you.
 - You must obtain an original form from the clerk of the court to fill out.

¹⁴ R.I. Gen. Laws § 12-1.3-4(b) (2006).

TIMEFRAME FOR EXPUNGEMENT:



- There is a specific time frame that must be followed before you can expunge your record.¹⁵
- This time frame begins on the date that you completed your sentence. Once this time frame has passed you may file your motion.
- The following time frames are utilized in Rhode Island:

MISDEMEANOR	FELONY
File motion <u>5 years</u> from completion of your sentence	File motion <u>10 years</u> from completion of your sentence

Misdemeanor Example: If you completed your sentence on January 1, 2008, you would not be able to file your motion until January 1, 2013.

Felony Example: If you completed your sentence on January 1, 2008, you would not be able to file your motion until January 1, 2018.

¹⁵ Id. at (b) and (c).

THINGS TO DO AFTER THE COURT EXPUNGES YOUR RECORD:

- Once your record has been expunged you should do several things:
 1. Get several certified copies of the expungement order from the court where your record was expunged;
 2. Then, make certain that you bring a certified copy to the following locations:
 - a) court clerk where the expungement order was entered;
 - To be careful, ask the clerk to make certain that the information is entered into the court's system. And, check the court's website periodically to be positive that the information was recorded.

- b) the Rhode Island Bureau of Criminal Identification; and,
- c) the arresting police department.

The purpose of this final step is to make certain that **ALL** of your records are sealed. Sometimes, even though you have had your record expunged, certain places do not receive a copy of the order and hold onto the information based on their own procedures for keeping records.



If you have any questions concerning this brochure, please contact the:

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