

Amended Executive Order

In 2022, pursuant to G.L. 1956 § 21-28.11 -1, *et seq.*, the General Assembly enacted the Rhode Island Cannabis Act (Act) which decriminalized possession of certain quantities of recreational cannabis in Rhode Island.

Also, in recognition of the significant negative impact upon individuals previously convicted or civilly violated for low level, non-violent offenses for possession of marijuana, G.L. 1956 § 12-1.3-5, Expungement of Marijuana Records, was enacted and authorizes the automatic expungement of decriminalized civil and criminal violations for misdemeanor and felony marijuana possession offenses. The statute vests the Chief Justice of the Supreme Court with the authority to develop procedures for enacting the expungement provisions.

As such, pursuant to the authority vested in the Chief Justice of the Rhode Island Supreme Court by G.L. 1956 § 8-15-2 and G.L. 1956 § 12-1.3-5(c) of the Rhode Island General Laws, it is hereby ordered that the Rhode Island Superior and District Courts, and the Rhode Island Traffic Tribunal, establish and implement marijuana expungement procedures as set forth herein.

1. Possession of Marijuana – Singular Conviction and/or Civil Violation:

- a. The Superior and District Courts and the Traffic Tribunal shall identify those cases wherein possession of marijuana was the sole offense or violation in a case resulting in a civil violation or judgment of conviction.
- b. Where the criminal offense resulted in a finding of guilty or a plea of *nolo contendere*, with a term of incarceration, a suspended term of incarceration, a

sentence of probation, or a conviction resulting in a deferred sentence or a filing, whether or not the sentence(s) have been completed, said decriminalized convictions for possession of marijuana offenses shall be eligible for expungement pursuant to G.L. 1956 Rhode Island General Law § 12-1-3.5(a).

- c. Where a possession of marijuana offense resulted in a civil violation, said decriminalized civil violations for marijuana offenses shall be eligible for expungement pursuant to G.L. 1956 Rhode Island General Law § 12-1-3.5(a).
- d. If the Superior and District Courts determine a criminal record is to be expunged, the Presiding Justice of the Superior Court and the Chief Judge of the District Court shall enter appropriate orders expunging the record of conviction and order all reference to the conviction be removed from public inspection in accordance with G.L. 1956 Rhode Island General Law § 12-1-3.5(a) and G.L. § 12-1.3-5(f). Said orders shall be sealed following entry.
- e. If the Traffic Tribunal determines a record is to be expunged, the Chief Magistrate of the Rhode Island Traffic Tribunal shall enter appropriate orders expunging the record of civil violation and order all reference to the civil violation be removed from public inspection in accordance with G.L. 1956 Rhode Island General Law § 12-1-3.5(a) and G.L. § 12-1.3-5(f). Said orders shall be sealed following entry.
- f. The Superior and District Courts and the Traffic Tribunal shall implement security measures and review procedures to ensure that only eligible cases are expunged.
- g. Prior to entry of the expungement orders all cases determined eligible for expungement shall be identified pursuant to Omnibus Orders issued from their respective courts and said Orders will be transmitted to the Department of the Attorney General for review. Within a reasonable time following

transmission of the Omnibus Orders, each court shall enter appropriate orders of expungement. Following entry of the expungement orders and within a reasonable time thereafter, the Superior and District Courts and the Traffic Tribunal shall send the record(s) of expungement to the Department of the Attorney General and the police departments where the charge(s) were initiated. The Department of Attorney General shall review the records of expungement and notify the appropriate court should any errors be identified in the expunged cases. Where applicable, the expungement of civil violations shall also be sent to the Rhode Island Division of Motor Vehicles. The records may be transmitted individually and/or by bulk data transmission. Upon request of a petitioner, the record shall also be transmitted to agencies known by the petitioner to possess a record of conviction or violation.

h. Expungement of convictions under this section shall be completed within three months of the date of this order.

2. Possession of Marijuana – Multiple Convictions and/or Civil Violations:

a. The Superior and District Courts and the Traffic Tribunal shall identify those cases wherein possession of marijuana was one of several counts in a criminal case or civil violation matter that resulted, among other charges, in a civil violation or judgment of conviction for possession of marijuana.

b. Wherein the criminal offense(s) of possession of marijuana resulted in a finding of guilty or a plea of nolo contendere, with a term of incarceration, a suspended term of incarceration sentence, a sentence of probation, or any convictions resulting in a deferred sentence or a filing, whether or not the sentence(s) have been completed, said decriminalized convictions for possession of marijuana shall be eligible for expungement pursuant to G.L. 1956 Rhode Island General Law § 12-1-3.5(a).

- c. Where a criminal case has multiple counts, only felony and misdemeanor possession of marijuana counts are eligible for expungement pursuant to G.L. 1956 Rhode Island General Law § 12-1-3.5(a). Therefore, a criminal case shall not be expunged in its entirety and all records of other criminal convictions shall remain in full force and effect and available for public inspection.
- d. Where a civil matter has multiple counts, only civil violations for possession of marijuana are eligible for expungement pursuant to G.L. 1956 Rhode Island General Law § 12-1-3.5(a). Therefore, a civil matter shall not be expunged in its entirety and all other records of civil violations shall remain in full force and effect and available for public inspection.
- e. The Superior and District Courts shall review their database of cases and identify those cases wherein an individual charge is eligible to be expunged. The Presiding Justice of the Superior Court and the Chief Judge of the District Court shall then enter appropriate orders expunging the eligible charge(s) and order all reference to the expunged conviction(s) be removed from public inspection in accordance with G.L. 1956 Rhode Island General Law § 12-1-3.5(a) and G.L. § 12-1.3-5(f). Said orders shall be sealed following entry.
- f. The Traffic Tribunal shall review its database of cases and identify those cases wherein a violation is eligible to be expunged. The Chief Magistrate shall then enter appropriate orders expunging the civil violation(s) and order all reference to the expunged civil violation(s) be removed from public inspection, in accordance with G.L. 1956 Rhode Island General Law § 12-1-3.5(a) and G.L. § 12-1.3-5(f). Said orders shall be sealed following entry.
- g. The Superior and District Courts and the Traffic Tribunal shall implement security measures and review procedures to ensure that only eligible charges are expunged.

h. Prior to entry of the expungement orders, all cases wherein an individual charge is determined eligible for expungement shall be identified pursuant to an appropriate order issued from their respective courts and said orders will be transmitted to the Department of the Attorney General for review. Within a reasonable time following transmission of the Orders, each court shall enter orders of expungement. Following entry of orders of expungements and within a reasonable time thereafter, the Superior and District Courts and the Traffic Tribunal shall send the record(s) of expungements to the Department of the Attorney General and the police departments where the charge(s) were initiated. The Department of Attorney General shall review the records of expungement and notify the appropriate court should any errors be identified in the expunged charges. Where applicable, the expungement of civil violations shall be sent to the Rhode Island Division of Motor Vehicles. The records may be transmitted individually and/or by bulk data transmission. Upon request of a petitioner, the record shall also be transmitted to agencies known by the petitioner to possess a record of conviction or violation. Expungement of convictions under this section shall be completed by July 1, 2024.

3. Expedited Expungement:

- a. Any person may request expungement of his/her qualifying convictions or civil violations before the deadlines outlined above by submitting a written request to the court in which the subject conviction entered. All fees associated with filing a written request for expungement shall be waived pursuant to G.L. 1956 § 12-1.3-5(g)(3).
- b. Written requests for expungement may be submitted in person or via electronic mail to the Superior and District Courts' Clerk's Office in each county as well as the Traffic Tribunal Clerk's Office.

- c. Requests for expedited expungements shall include: defendant name, defendant date of birth and case number.
- d. Requests for expedited expungements shall be reviewed and entered, if appropriate, within five (5) business days of submission.

4. Notice:

The Administrative Office of State Courts (AOSC) shall publish information about the expungement process on the Judiciary's website, including the criteria for expungement, information about requesting an expedited expungement, along with notice that the expungement process is free of charge.

Entered as an Executive Order this 31st day of January 2023.

BY ORDER

/s/
Paul A. Suttell
Chief Justice