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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

A N A C T

RELATING TO CRIMINAL PROCEDURE -- WARRANTS FOR ARREST

Introduced By: Senators Metts, Pichardo, C Levesque, Issa, and Goodwin

Date Introduced: February 06, 2008

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 12-6-7.1 of the General Laws in Chapter 12-6 entitled "Warrants
2 for Arrest" is hereby amended to read as follows:

3 **12-6-7.1. Service of arrest warrants.** -- (a) Whenever any judge of any court shall issue
4 his or her warrant against any person for failure to appear or comply with a court order, or for
5 failure to make payment of a court ordered fine, civil assessment, or order of restitution, the judge
6 may direct the warrant to each and all sheriffs and deputy sheriffs, the warrant squad, or any
7 peace officer as defined in section 12-7-21, requiring them to apprehend the person and bring him
8 or her before the court to be dealt with according to law; and the officers shall obey and execute
9 the warrant, and be protected from obstruction and assault in executing the warrant as in service
10 of other process. The person apprehended shall, in addition to any other costs incurred by him or
11 her, be ordered to pay a fee for service of this warrant in the sum of one hundred twenty-five
12 dollars (\$125). Twenty-five dollars (\$25.00) of the above fee collected as a result of a warrant
13 squad arrest shall be divided among the local law enforcement agencies assigned to the warrant
14 squad. Any person apprehended on a warrant for failure to appear for a cost review hearing in the
15 superior court may be released upon posting with a justice of the peace the full amount due and
16 owing in court costs as described in the warrant or bail in an other amount or form that will
17 ensure the defendant's appearance in the superior court at an ability to pay hearing, in addition to
18 the one hundred twenty-five dollars (\$125) warrant assessment fee described above. Any person
19 detained as a result of the actions of the justice of the peace in acting upon the superior court cost

1 warrant shall be brought before the superior court at its next session. Such monies shall be
2 delivered by the justice of the peace to the court issuing the warrant on the next court business
3 day.

4 (b) Any person arrested pursuant to a warrant issued by a municipal court may be
5 presented to a judge of the district court, or a justice of the peace authorized to issue warrants
6 pursuant to section 12-10-2, for release on personal recognizance or bail when the municipal
7 court is not in session. The provisions of this section shall apply only to criminal and not civil
8 cases pending before the courts.

9 (c) Any person arrested pursuant to a warrant issued hereunder shall:

10 (1) be immediately brought before the court;

11 (2) if the court is not in session then the person shall be brought before the court at its
12 next session;

13 (3) be afforded a review hearing on his/her ability to pay within forty-eight (48) hours;
14 and

15 (4) if the court is not in session at the time of the arrest, a review hearing on his/her
16 ability to pay will be provided at the time for the first court appearance, as set forth in subsection
17 (c)(3) of this section.

18 SECTION 2. Section 12-18.1-3 of the General Laws in Chapter 12-18.1 entitled
19 "Probation and Parole Support Act" is hereby amended to read as follows:

20 **12-18.1-3. Court costs.** -- (a) The court shall assess as court costs, in addition to those
21 otherwise provided by law, against all defendants charged with a felony, misdemeanor, or petty
22 misdemeanor, and who plead nolo contendere or guilty or who are found guilty of the
23 commission of those crimes, as follows:

24 (1) Where the offense charged is a felony and carries a maximum penalty of five (5) or
25 more years imprisonment, three hundred dollars (\$300) or ten percent (10%) of any fine imposed
26 on the defendant by the court, whichever is greater;

27 (2) Where the offense charged is a felony and carries a maximum penalty of less than
28 five (5) years imprisonment, one hundred eighty dollars (\$180) or ten percent (10%) of any fine
29 imposed on the defendant by the court, whichever is greater; and

30 (3) Where the offense charged is a misdemeanor, sixty dollars (\$60.00) or ten percent
31 (10%) of any fine imposed on the defendant by the court, whichever is greater.

32 (b) These costs shall be assessed whether or not the defendant is sentenced to prison and
33 in no case shall they be remitted by the court.

34 (c) When there are multiple counts or multiple charges to be disposed of simultaneously,

1 the judge shall have the authority to suspend the obligation of the defendant to pay on all counts
2 or charges above ~~three (3)~~ two (2).

3 (d) If the court determines that the defendant does not have the ability to pay the costs as
4 set forth in this section, the judge may by specific order mitigate the costs in accordance with the
5 court's determination of the ability of the offender to pay the costs.

6 SECTION 3. Section 12-19-34 of the General Laws in Chapter 12-19 entitled "Sentence
7 and Execution" is hereby amended to read as follows:

8 **12-19-34. Restitution payments Priority of restitution payments to victims of crime.**

9 == (a) (1) If a person, pursuant to sections 12-19-32, 12-19-32.1, or 12-19-33, is ordered to make
10 restitution in the form of monetary payment the court may order that it shall be made through the
11 administrative office of state courts which shall record all payments and pay the money to the
12 person injured in accordance with the order or with any modification of the order; provided, in
13 cases where court ordered restitution totals less than two hundred dollars (\$200) payment shall be
14 made at the time of sentencing if the court determines that the defendant has the present ability to
15 make restitution.

16 (2) Payments made on account when both restitution to a third-party is ordered, and court
17 costs, fines, and fees, and assessments related to prosecution are owed, shall be disbursed by the
18 administrative office of the state courts in the following priorities:

19 (i) court ordered restitution payments to person injured until such time as the court's
20 restitution is fully satisfied; and

21 (ii) court costs, fines, fees, and assessments related to prosecution after the full payment
22 of restitution.

23 (3)(2) Notwithstanding any other provision of law, any interest which has been accrued
24 by the restitution account in the central registry shall be deposited on a regular basis into the
25 violent crime indemnity fund, established by chapter 25 of this title. In the event that the office of
26 the administrator of the state courts cannot locate the person or persons to whom restitution is to
27 be made, the principal of the restitution payment shall be deposited into the general fund.

28 (b) The state is authorized to develop rules and/or regulations relating to assessment,
29 collection, and disbursement of restitution payments when any of the following events occur:

30 (1) The defendant is incarcerated or on home confinement but is able to pay some
31 portion of the restitution; or

32 (2) The victim dies before restitution payments are completed.

33 (c) The state may maintain a civil action to place a lien on the personal or real property
34 of a defendant who is assessed restitution, as well as to seek wage garnishment, consistent with

1 state and federal law.

2 SECTION 4. Section 12-20-10 of the General Laws in Chapter 12-20 entitled "Costs" is
3 hereby amended to read as follows:

4 **12-20-10. ~~Remission of costs~~ Remission of costs-Prohibition against remitting**
5 **restitution to victims of crime-ability to pay-indigency.** – (a) The payment of costs in criminal
6 cases may, upon application, be remitted by any justice of the superior court; provided, that any
7 justice of a district court may, in his or her discretion, remit the costs in any criminal case pending
8 in his or her court, or in the case of any prisoner sentenced by the court, and from which sentence
9 no appeal has been taken. Notwithstanding any other provision of law, this section shall not limit
10 the court's inherent power to remit any fine, fee, assessment or other costs of prosecution,
11 provided no order of restitution shall be suspended by the court.

12 (b) For purposes of sections 12-18.1-3(d), 12-21-20, 12-25-28(b), 12-28-4.01(c)(3)(iv)
13 and 21-28-4.17.1, the following conditions shall be prima facie evidence of the defendant's
14 indigency and limited ability to pay:

15 (1) Qualification for and/or receipt of any of the following benefits or services by the
16 defendant:

17 (i) temporary assistance to needy families

18 (ii) social security including supplemental security income and state supplemental
19 payments program;

20 (iii) public assistance

21 (iv) disability insurance; or

22 (v) food stamps

23 (2) Despite the defendant's good faith efforts to pay, outstanding court orders for
24 payment in the amount of one-hundred dollars (\$100) or more for any of the following:

25 (i) restitution payments to the victims of crime;

26 (ii) child support payments; or

27 (iii) payments for any counseling required as a condition of the sentence imposed
28 including, but not limited to, substance abuse, mental health, and domestic violence.

29 SECTION 5. Section 12-21-20 of the General Laws in Chapter 12-21 entitled "Recovery
30 of Fines, Penalties, and Forfeitures" is hereby amended to read as follows:

31 **12-21-20. ~~Order to pay costs~~ Order to pay costs and determination of ability to pay.**

32 = (a) If, upon any complaint or prosecution before any court, the defendant shall be ordered to
33 pay a fine, enter into a recognizance or suffer any penalty or forfeiture, he or she shall also be
34 ordered to pay all costs of prosecution, unless directed otherwise by law.

1 **(b) In superior court, the judge shall make a preliminary assessment of the defendant's**
2 **ability to pay immediately after sentencing by use of the procedures specified in this section.**

3 **(c) In district court, the judge shall make a preliminary assessment of the defendant's**
4 **ability to pay immediately after sentencing or nearly thereafter as practicable by use of the**
5 **procedures specified in this section.**

6 **(d) The defendant's ability to pay and payment schedule shall be determined by use of**
7 **standardized procedures including a financial assessment instrument. The financial assessment**
8 **instrument shall be:**

9 **(1) based upon sound and generally accepted accounting principles;**

10 **(2) completed based on a personal interview of the defendant and includes any and all**
11 **relevant information relating to the defendant's present ability to pay including, but not limited to,**
12 **the information contained in section 12-20-10; and**

13 **(3) made by the defendant under oath.**

14 **(e) The financial instrument may, from time to time and after hearing, be modified by the**
15 **court.**

16 **(f) When persons come before the court for failure to pay fines, fees, assessments and**
17 **other costs of prosecution, or court ordered restitution, and their ability to pay and payment**
18 **schedule has not been previously determined, the judge, the clerk of the court, or their designee**
19 **shall make these determinations by use of the procedures specified in this section.**

20 **(g) Nothing in this section shall be construed to limit the court's ability, after hearing in**
21 **open court, to revise findings about a person's ability to pay and payment schedule made by the**
22 **clerk of the court or designee, based upon the receipt of newly available, relevant, or other**
23 **information.**

24
25 SECTION 6. Section 12-25-28 of the General Laws in Chapter 12-25 entitled "Criminal
26 Injuries Compensation" is hereby amended to read as follows:

27 **12-25-28. Special indemnity account for criminal injuries compensation.** -- (a) It is
28 provided that the general treasurer establish a violent crimes indemnity account within the general
29 fund for the purpose of paying awards granted pursuant to this chapter. The court shall assess as
30 court costs in addition to those provided by law, against all defendants charged with a felony,
31 misdemeanor, or petty misdemeanor, whether or not the crime was a crime of violence, and who
32 plead nolo contendere, guilty or who are found guilty of the commission of those crimes as
33 follows:

34 (1) Where the offense charged is a felony and carries a maximum penalty of five (5) or

1 more years imprisonment, one hundred and fifty dollars (\$150) or fifteen percent (15%) of any
2 fine imposed on the defendant by the court, whichever is greater.

3 (2) Where the offense charged is a felony and carries a maximum penalty of less than
4 five (5) years imprisonment, ninety dollars (\$90.00) or fifteen percent (15%) of any fine imposed
5 on the defendant by the court, whichever is greater.

6 (3) Where the offense charged is a misdemeanor, thirty dollars (\$30.00) or fifteen
7 percent (15%) of any fine imposed on the defendant by the court, whichever is greater.

8 (b) These costs shall be assessed whether or not the defendant is sentenced to prison and
9 in no case shall they be waived by the court unless the court finds an inability to pay.

10 (c) When there are multiple counts or multiple charges to be disposed of simultaneously,
11 the judge shall have the authority to suspend the obligation of the defendant to pay on all counts
12 or charges above ~~three (3)~~ two (2).

13 (d) Up to five percent (5%) of the state funds raised under this section, as well as federal
14 matching funds, shall be available to pay administrative expenses necessary to operate this
15 program. Federal funds for this purpose shall not supplant currently available state funds, as
16 required by federal law.

17 SECTION 7. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE -- WARRANTS FOR ARREST

- 1 This act would amend the laws regarding payment of costs, restitution, fines and the like
- 2 to the courts. It would further require court review of a person's ability to pay.
- 3 This act would take effect upon passage.

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