

**2011 -- S 350 SUBSTITUTE A AS AMENDED**

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LC01372/SUB A/2  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2011**

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- COURTS -- SUPERIOR COURT

Introduced By: Senators Jabour, Metts, Nesselbush, Perry, and Miller

Date Introduced: February 16, 2011

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 8-2-39.2 of the General Laws in Chapter 8-2 entitled "Superior  
2 Court" is hereby amended to read as follows:

3           **8-2-39.2. Drug court magistrate -- Appointment, duties and powers.** -- (a) For the  
4 purposes of this chapter: (1) "Non-violent" means and includes all charges that are not crimes of  
5 violence, the following being a list of all charges considered to be crimes of violence for the  
6 purposes of this section: murder, manslaughter, first degree arson, kidnapping with intent to  
7 extort, robbery, first degree sexual assault, second degree sexual assault, first and second degree  
8 child molestation, assault, assault with intent to murder, assault with intent to rob, assault with  
9 intent to commit first degree sexual assault, entering a dwelling house with intent to commit  
10 murder, robbery, or sexual assault.

11           (2) "Drug addicted person" means a person who exhibits a maladaptive pattern of  
12 behavior resulting from drug use, including one or more of the following: impaired control over  
13 drug use; compulsive use; and/or continued use despite harm, and craving.

14           **(b)** There is hereby created within the superior court the position of Drug Court  
15 Magistrate who shall be appointed by the presiding justice of the superior court with the advice  
16 and consent of the senate. The persons appointed to serve as Drug Court Magistrates shall be  
17 members of the bar of Rhode Island. The powers and duties of the Drug Court Magistrate shall be  
18 prescribed in the order appointing him or her in addition to those described herein.

19           The Drug Court Magistrate's term shall be ten (10) years and until a successor is

1 appointed and qualified. Nothing in this article shall prohibit a Drug Court Magistrate from being  
2 reappointed for additional ten (10) year terms by the presiding justice of the superior court with  
3 the advice and consent of the senate. He or she shall receive a salary equivalent to that received  
4 by the special magistrate assigned to the superior court. The Drug Court Magistrate shall preside  
5 over the Adult Drug Court. The Adult Drug Court Program shall combine the coercive powers of  
6 the court with a therapeutic regimen in order to rehabilitate drug addicted defendants.

7 ~~(b)~~(c) The Drug Court Magistrate shall be empowered to hear and decide as a superior  
8 court justice all matters relating to those adult offenders who come before the jurisdiction of the  
9 superior court on any offense relating to the offender's participation in the Adult Drug Court. In  
10 addition, the Drug Court Magistrate shall have the power to impose a period of incarceration  
11 upon a plea of guilty or nolo contendere, and also have the power to confine any person who has  
12 been found to be in violation of any conditions previously imposed by the superior court.

13 (d) The Drug Court Magistrate shall make the final determination as to whether a  
14 defendant is admitted into the program. Individuals meeting the following criteria, shall be  
15 screened by staff working at the office of the attorney general upon the department's own referral,  
16 upon a request by counsel entered on behalf of a defendant; upon request by a judge of the  
17 superior or district court, or, in the case of a person waivable by the family court, by a judge of  
18 that court, or the department of corrections for admittance into the Adult Drug Court:

19 (1) The individual is charged with or convicted of an alcohol or drug related offense or  
20 with an appropriate non-violent offense.

21 (2) The individual has no pending charges or prior convictions for felony crimes of  
22 violence.

23 (3) The individual has no pending charges or prior convictions for delivery of a  
24 controlled substance.

25 (4) The defendant is a drug addicted person.

26 (e) In order to ensure that no defendants that may be eligible to participate in the Adult  
27 Drug Court are incarcerated without review by the Drug Court Magistrate, the department of  
28 corrections will screen all individuals held in their custody that meet criteria in subdivision (d)(1)  
29 and (d)(2) and refer those individuals to the Adult Drug Court. Screening will be done using an  
30 established screening protocol to determine if the individual might meet criteria in subdivision  
31 (d)(3). It will be the responsibility of the Adult Drug Court to determine if, using an established  
32 assessment protocol, the defendant meets criteria in subdivision (c)(3).

33 (f) All individuals accepted into Drug Court will be bound by a Drug Court contract, as  
34 defined by the Adult Drug Court, which sets forth the court's expectations, the role and

1 responsibilities of the Drug Court, the conditions imposed upon and the responsibilities of the  
2 defendant, and the treatment plan goals and strategies. If a defendant fails to abide by the Drug  
3 Court conditions and orders, he or she may be terminated from the program by the Drug Court  
4 judge and sentenced as he or she deems appropriate.

5 ~~(e) The Drug Court Magistrate shall be empowered to hear and decide as a superior court~~  
6 ~~justice all matters that may come before the superior court pursuant to chapter 37.1 of title 11~~  
7 ~~"Sexual Offender Registration and Community Notification."~~

8 (d)(g) The Drug Court Magistrate and/or the presiding justice of the superior court may  
9 fix the venue of any person who is before the superior court as a participant in the Adult Drug  
10 Court or who is alleged to be a sexual predator, and who has filed an objection to community  
11 notification.

12 (e)(h) The Drug Court Magistrate shall be governed by the commission on judicial  
13 tenure and discipline, chapter 16 of title 8 in the same manner as justices and judges; shall be  
14 subject to all provisions of the canons of judicial ethics or code of judicial conduct; and shall be  
15 subject to all criminal laws relative to judges by virtue of sections 11-7-1 and 11-7-2.

16 (f)(i) A party aggrieved by an order entered by the Drug Court Magistrate shall be  
17 entitled to a review of the order by a justice of the ~~Superior Court~~ superior court. Unless  
18 otherwise provided in the rules of procedure of the court, such review shall be on the record and  
19 appellate in nature. The ~~Superior Court~~ superior court shall, by rules of procedure, establish  
20 procedures for reviews of orders entered by a Drug Court Magistrate, and for enforcement of  
21 contempt adjudications of a Drug Court Magistrate.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO COURTS AND CIVIL PROCEDURE -- COURTS -- SUPERIOR COURT

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1           This act would amend and define the duties of a Drug Court Magistrate, and specify  
2    which individuals qualify for the Drug Court and the conditions and responsibilities imposed  
3    thereon.

4           This act would take effect upon passage.

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Presented by