

2022 -- H 7410

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE GENERALLY --
EVIDENCE

Introduced By: Representatives Craven, Casimiro, and McEntee

Date Introduced: February 09, 2022

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 9-19-25 of the General Laws in Chapter 9-19 entitled "Evidence" is
2 hereby amended to read as follows:

3 **9-19-25. Illegally seized evidence inadmissible.**

4 In the trial of any action in any court of this state, [or in any civil or administrative hearing](#)
5 [brought by the state or any agency thereof or any subdivision thereof](#), no evidence shall be
6 admissible where the evidence shall have been procured by, through, or in consequence of any
7 illegal search and seizure as prohibited in § 6 of article 1 of the constitution of the state of Rhode
8 Island.

9 SECTION 2. Section 20-1-8, 20-1-8.1 and 20-1-16 of the General Laws in Chapter 20-1
10 entitled "General Provisions" are hereby amended to read as follows:

11 **20-1-8. Enforcement powers of director and conservation officers.**

12 (a) The director and each conservation officer shall have the power:

13 (1) To enforce all laws, rules, and regulations of this state pertaining to:

14 (i) Fish, wildlife, and all vertebrates, invertebrates, and plants;

15 (ii) Freshwater wetlands, dams, and resources;

16 (iii) Areas and activities subject to the jurisdiction of the coastal resources management
17 council;

18 (iv) State parks, reservations, management areas, hatcheries, game preserves, any law of

1 the state within state parks, lands cooperatively managed, facilities that host official department
2 events, and properties leased by the department;

3 (v) Solid and hazardous waste transportation, storage, and disposal and any other laws of
4 the state regarding solid and/or hazardous wastes;

5 (vi) Boating safety, water safety, and drowning prevention;

6 (vii) Water and air pollution and open burning;

7 (viii) Firearms;

8 (ix) Littering;

9 (x) Trees and forests, forestry, and protection of forests from fire hazards and trespass;

10 (xi) Agriculture, farmland, and pest control; and

11 (xii) All-terrain vehicles, as defined in § 31-3.2-1(8).

12 (2) To issue summonses and to execute all warrants and search warrants for the violation
13 of the laws, rules, and regulations enumerated in subsections (a)(1) or (a)(9);

14 (3) To serve subpoenas issued for the trial or hearing of all offenses against the law, rules,
15 and regulations enumerated in subsections (a)(1) or (a)(9);

16 (4) To arrest, without a warrant, any person found violating any law, rule, or regulation
17 enumerated in subsection (a)(1), take that person before a court of competent jurisdiction, and
18 detain that person in custody at the expense of the state until arraignment, except when a summons
19 can be issued in accordance with § 12-7-11;

20 (5) To seize and take possession of all fish, shellfish, crustaceans, marine mammals,
21 amphibians, reptiles, birds, and mammals in possession, or under control of, any person or that
22 have been shipped, or are about to be shipped, at any time, in any manner, or for any purpose
23 contrary to the laws of this state, and dispose of them at the discretion of the director;

24 (6) To seize all fishing tackle, firearms, shooting and hunting paraphernalia, hunting,
25 fishing, or trapping licenses, traps, decoys, tongs, bullrakes, dredges, or other implements or
26 appliances used in violation of any law, rule, or regulation relating to fish, shellfish, crustaceans,
27 marine mammals, amphibians, reptiles, birds, and mammals, or any equipment, materials, tools,
28 implements, samples of substances, or any other item used in the violation of any other law, rule,
29 or regulation enumerated in subsection (a)(9), when making an arrest as found in the execution of
30 a search warrant, and hold the seized item or items at the owner's expense until the fine and costs
31 imposed for the violation have been paid in full;

32 (7)(i) To go on board any boat or vessel engaged, or believed to be engaged, in fishing and
33 examine any fishing, shellfish, scallop, lobster, multipurpose, or other license issued under this
34 title;

1 (ii) To go on board any boat or vessel engaged, or believed to be engaged, in fishing and
2 to inspect that boat or vessel for compliance with the provisions of this title and any rules relative
3 to the taking of fish, shellfish, crustaceans, marine mammals, amphibians, and reptiles. In the
4 absence of probable cause to believe that a crime relative to the taking of these marine species has
5 been, or is being, committed, any evidence obtained as the result of a boarding (other than for the
6 purpose of examining a license) or of an inspection may not be used in a criminal [or administrative](#)
7 prosecution;

8 (8) To carry firearms or other weapons, concealed or otherwise, in the course of, and in
9 performance of, the duties of office; and

10 (9) To arrest without a warrant, to execute all warrants and search warrants, and to make
11 and execute complaints within any district to the justice or clerk of the district court without
12 recognizance or surety against any person for the following criminal offenses:

13 (i) Assault;

14 (ii) Assault with a dangerous weapon;

15 (iii) Larceny;

16 (iv) Vandalism;

17 (v) Obstructing officer in execution of duty.

18 (b) Conservation officers shall be deemed "officer" within the meaning of § 11-32-1.

19 (c) It shall be a misdemeanor punishable by a fine of not more than five hundred dollars
20 (\$500) or imprisonment for not more than thirty (30) days, or both, for any person to refuse to move
21 or to stop on an oral command or order of a conservation officer when the officer is acting in the
22 performance of the officer's duties.

23 **20-1-8.1. Procedures for seizure and forfeiture.**

24 (a) Any vessel, boat, fishing tackle, guns, shooting and hunting paraphernalia, traps,
25 decoys, or any other implements, appliances, or equipment used in violation of any law, rule, or
26 regulation relating to fish and wildlife, [including, but not limited to, marine wildlife in a fisher's](#)
27 [possession](#), that, by provision of any section of this title, is subject to forfeiture to the state, shall
28 be seized pursuant to § 20-1-8(a)(6) and forfeited under the provisions of this section.

29 (b) The attorney general shall proceed pursuant to §§ 12-21-23 -- 12-21-32, to show cause
30 why the vessel, boat, fishing tackle, guns, shooting and hunting paraphernalia, traps, decoys, or any
31 other implements, appliances, or equipment used in the knowing and willful violation of any law,
32 rule, or regulation relating to fish and wildlife that, by provision of any section of this title, is subject
33 to forfeiture to the state, may be forfeited to the use of or the sale of the department on producing
34 due proof that the vessel, fishing tackle, guns, shooting and hunting paraphernalia, traps, decoys,

1 or any other implements, appliances, or equipment was used in this violation.

2 (c) Whenever property is forfeited under this section and the specific provision of this title
3 requiring forfeiture for a particular offense, the department may:

4 (1) Retain the property for official use; or

5 (2) Sell any forfeited property that is not required by this title to be destroyed and that is
6 not harmful to the public; but the proceeds of this sale, after first deducting the amount sufficient
7 for all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure,
8 maintenance of custody, and advertising and court costs, shall be paid to the general treasurer for
9 the use of the state.

10 **20-1-16. Penalty for violations.**

11 (a) Unless otherwise specifically provided, the violation of any law or rule or regulation
12 relating to wild animals, wild birds, lobsters and fish, marine, freshwater and anadromous fisheries
13 and shellfisheries shall be a misdemeanor, punishable by a fine of not more than five hundred
14 dollars (\$500), or imprisonment for up to ninety (90) days, or both, provided, that, any
15 administrative violation shall be punished by a fine of not more than five hundred dollars (\$500).

16 (b) Striped bass penalties. Any person, firm, or corporation shall be fined in accordance
17 with the following schedule:

18 (1) First offense. Upon conviction, not less than one hundred dollars (\$100) for each striped
19 bass taken, possessed, sold or possessed, and/or offered for sale and imprisonment for up to ninety
20 (90) days, or both.

21 (2) Second offense. Upon conviction, not less than two hundred dollars (\$200) for each
22 striped bass taken, possessed, sold or possessed, and/or offered for sale and imprisonment for up to
23 ninety (90) days, or both; and any boat, fishing tackle or other implements used in violation shall
24 be subject to forfeiture to the state.

25 (3) Third and subsequent offenses. Upon conviction, not less than five hundred dollars
26 (\$500) for each striped bass taken, possessed, sold or possessed, and/or offered for sale and
27 imprisonment for up to ninety (90) days, or both; and any boat, fishing tackle or other implements
28 used in this violation shall be subject to forfeiture to the state.

29 SECTION 3. Chapter 20-1 of the General Laws entitled "General Provisions" is hereby
30 amended by adding thereto the following section:

31 **20-1-30. Civil forfeiture procedure.**

32 (a) In addition to other penalties provided in this chapter, any petition to forfeit pursuant to
33 § 20-1-8.1(a) shall be in the nature of an action in rem and shall be governed by the civil rules for
34 in rem proceedings.

1 (b) All property described in § 20-1-8.1 is subject to civil forfeiture except that:

2 (1) No property shall be forfeited under the provisions of this section unless it appears that
3 the owner or other person in charge of the conveyance was a consenting party or privy to the
4 covered offense charged;

5 (2) No property shall be forfeited under the provisions of this section by reason of any act
6 or omission established by the owner of it to have been committed or omitted by any person other
7 than the owner.

8 (3) No property shall be forfeited under this section, to the extent of the interest of an
9 owner, by reason of any act or omission established by that owner to have been committed or
10 omitted without knowledge or consent of that owner.

11 (c) Property subject to forfeiture under this section may be seized by a law enforcement
12 officer:

13 (1) Upon process issued pursuant to the superior court rules of civil procedure applicable
14 to in rem proceedings;

15 (2) Upon process issued pursuant to a legally authorized search warrant; or

16 (3) Without court process when:

17 (i) The seizure is incident to a lawful arrest or search;

18 (ii) The property subject to seizure has been the subject of a prior judgment in favor of the
19 state for a violation of this chapter;

20 (iii) The law enforcement officer has probable cause to believe that the property is directly
21 or indirectly related to a violation of this chapter; or

22 (iv) The law enforcement officer has probable cause to believe that the property is
23 forfeitable under § 20-1-8.1.

24 (d) In the event of a seizure under § 20-1-8.1, the property shall not be subject to
25 sequestration or attachment but is deemed to be in the custody of the law enforcement agency
26 making the seizure, subject only to the order of the court. When property is seized under this
27 section, pending forfeiture and final disposition, the law enforcement agency making the seizure
28 shall:

29 (1) Remove the property to a storage area for safekeeping and preservation;

30 (2) Remove the property to a place designated by the court; or

31 (3) Request another agency authorized by law to take custody of the property and remove
32 it to an appropriate location within the jurisdiction of the court.

33 (e) As soon as practicable after seizure, the seizing agency shall conduct an inventory upon
34 and cause the appraisal of the property seized.

1 (f) In the event of a seizure under this section, the seizing agency shall, within ten (10)
2 days, send to the attorney general a written request for forfeiture, which shall include a statement
3 of all facts and circumstances including the names of all witnesses then known, the appraised value
4 of the property and the statutory provision relied upon for forfeiture.

5 (g) The attorney general shall immediately examine the facts and applicable law of the
6 cases referred to the attorney general pursuant to this section, and if it is probable that the property
7 is subject to forfeiture shall immediately cause the initiation of administrative or judicial
8 proceedings against the property. If, upon inquiry and examination, the attorney general determines
9 that those proceedings probably cannot be sustained or that justice does not require the institution
10 of the proceedings, the attorney general shall make a written report of those findings, transmit a
11 copy to the seizing agency, and immediately authorize the release of the property.

12 (h) If the value of any personal property seized does not exceed twenty thousand dollars
13 (\$20,000), the attorney general may forfeit the property administratively in the following manner:

14 (1) The attorney general shall provide notice of intention to forfeit property
15 administratively by publication in a local newspaper of general circulation, one day per week for
16 three (3) consecutive weeks.

17 (2) In addition, to the extent practicable, the attorney general shall provide notice by
18 registered mail of intent to forfeit the property administratively to all known interested parties and
19 all parties whose identity is reasonably subject to discovery who may have an interest in the
20 property seized.

21 (3) Notice by publication and by mail shall include:

22 (i) A description of the property;

23 (ii) The appraised value of the property;

24 (iii) The date and place of seizure;

25 (iv) The violation of law alleged against the subject property;

26 (v) The instructions for filing claim and cost bond or a petition for remission or mitigation;

27 and

28 (vi) A notice that the property will be forfeited to the state if a petition for remission or
29 mitigation or a claim and cost bond has not been timely filed.

30 (4) Persons claiming an interest in the property may file petitions for remission or
31 mitigation of forfeiture or a claim and cost bond with the attorney general within thirty (30) days
32 of the final notice by publication or receipt of written notice, whichever is earlier.

33 (5) The attorney general shall inquire into the facts and circumstances surrounding petitions
34 for remission or mitigation of forfeiture.

1 (6) The attorney general shall provide the seizing agency and the petitioner a written
2 decision on each petition for remission or mitigation within thirty (30) days of receipt of the petition
3 unless the circumstances of the case require additional time, in which case the attorney general
4 shall notify the petitioner in writing and with specificity within sixty (60) days of its decision.

5 (7) Any person claiming seized property under this subsection may institute de novo
6 judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a
7 claim and bond to the state in the amount of ten percent (10%) of the appraised value of the property
8 or in the penal sum of two hundred fifty dollars (\$250), whichever is greater, with sureties to be
9 approved by the attorney general, upon condition that in the case of forfeiture the claimant shall
10 pay all costs and expenses of the proceedings at the discretion of the court. Upon receipt of the
11 claim and bond, or if he or she elects, the attorney general shall file with the court a complaint in
12 rem in accordance with the procedures set forth in this section. Any funds received by the attorney
13 general as cost bonds shall be placed in an escrow account pending final disposition of the case.

14 (8) If no petitions or claims with bonds are timely filed, the attorney general shall prepare
15 a written declaration of forfeiture of the subject property to the state and dispose of the property in
16 accordance with this chapter. Claimants of the property may request waiver of the bond
17 requirement, which request shall not be unreasonably denied.

18 (9) If the petition is denied, the attorney general shall prepare a written declaration of
19 forfeiture to the state and dispose of the property in accordance with this chapter and the attorney
20 general's regulations, if any, pursuant to this chapter.

21 (10) A written declaration of forfeiture signed by the attorney general pursuant to this
22 chapter shall be deemed to provide good and sufficient title to the forfeited property.

23 (i) If the value of any personal property seized exceeds twenty thousand dollars (\$20,000),
24 the attorney general shall file a complaint in rem against the property within twenty (20) days of
25 the receipt of the report referred to in subsection (f) of this section and after this filing the attorney
26 general shall provide notice of intention to forfeit by publication in a local newspaper of general
27 circulation for a period of at least once per week for three (3) consecutive weeks. The notice shall
28 include:

29 (1) A description of the property;

30 (2) The appraised value of the property;

31 (3) The date and place of seizure;

32 (4) The violation of law alleged against the subject property.

33 (j)(1) The case may be tried by a jury, if in the superior court, upon the request of either
34 party, otherwise by the court, and the cause of forfeiture alleged being proved, the court which shall

1 try the case shall enter upon judgment for the forfeiture and disposition of the property according
2 to law.

3 (2) An appeal may be claimed by either party from any judgment of forfeiture rendered by
4 the district court, to be taken in like manner as by defendants in criminal cases within the
5 jurisdiction of the district court to try and determine, to the superior court for the same county in
6 which the division of the district court rendering judgment is situated and like proceedings may be
7 had therein as in cases of informations for forfeitures originally filed in that court.

8 (3) The judgment of the superior court shall be final in all cases of the forfeitures, whether
9 originally commenced in that court or brought there by appeal, unless a new trial is ordered, for
10 cause shown by the supreme court.

11 (k) The in rem action shall be brought in the district court if the value of the property seized
12 is less than two hundred fifty thousand dollars (\$250,000), otherwise the in rem action shall be
13 brought in the superior court. The attorney general shall also, to the extent practicable, provide
14 written notice of the action in rem to all known interested parties and all persons whose identity is
15 reasonably subject to discovery who may have an interest in the property.

16 (l) Persons claiming an interest in the property may file claims against the property within
17 thirty (30) days of the final notice by publication or receipt of written notice, whichever is earlier.
18 The claims shall be expedited by the court and hearing shall be held within three (3) months of the
19 claimant's petition for remission or mitigation and may be extended for good cause.

20 (m) Upon order of the court forfeiting the subject property to the state, the state shall have
21 clear title to the forfeited property, and the attorney general may transfer good and sufficient title
22 to any subsequent purchaser or transferee. Title to the forfeited property shall be deemed to have
23 vested in the state upon the commission of the act giving rise to the forfeiture under this chapter.

24 (n) Upon entry of judgment for the claimant in any proceeding to forfeit property under
25 this chapter, the property shall immediately be returned to the claimant. If it appears that there was
26 reasonable cause for the seizure or the filing of the complaint, the court shall cause a proper
27 certificate of that to be entered, and the claimant shall not, in that case, be entitled to costs or
28 damages, nor shall the person or agency who made the seizure, nor the attorney general nor the
29 prosecutor, be liable to suit or judgment on account of the seizure, suit, or prosecution.

30 (o) In any action brought under this section, the state shall have the initial burden of
31 showing the existence of probable cause for seizure or arrest of the property. Upon that showing
32 by the state, the claimant shall have the burden of showing by a preponderance of evidence that the
33 property was not subject to forfeiture under this section.

34 SECTION 4. Section 42-17.7-6 and 42-17.7-8 of the General Laws in Chapter 42-17.7

1 entitled "Administrative Adjudication for Environmental Matters" are hereby amended to read as
2 follows:

3 **42-17.7-6. Hearings -- Orders -- Concurrent jurisdiction.**

4 (a) Subject to the provisions of § 42-17.7-2, every hearing for the adjudication of a violation
5 or for a license shall be held before a hearing officer. The chief hearing officer shall assign a hearing
6 officer to each matter. After due consideration of the [legal and constitutionally admissible](#) evidence
7 and arguments, the hearing officer shall make written findings of fact and conclusions of law which
8 shall be made public. [The hearing officers assigned to conduct any hearing shall consider the](#)
9 [constitutional issues raised by any respondent.](#)

10 (b) The department of environmental management and the coastal resources management
11 council shall promulgate such rules and regulations, not inconsistent with law, as to assure
12 uniformity of proceedings as applicable.

13 **42-17.7-8. Oaths -- Subpoenas -- Powers of hearing officers.**

14 (a) The hearing officers are hereby severally authorized and empowered to administer
15 oaths; and the hearing officers, in all cases of every nature pending before them, are hereby
16 authorized and empowered to summon and examine witnesses and to compel the production and
17 examination of papers, books, accounts, documents, records, certificates, and other legal,
18 [constitutionally admissible](#) evidence that may be necessary or proper for the determination and
19 decision of any question before or the discharge of any duty required by law of the hearing officer.

20 (b) All subpoenas and subpoena duces tecum shall be signed by a hearing officer or the
21 clerk and shall be served as subpoenas are served in civil cases in the superior court; and witnesses
22 so subpoenaed shall be entitled to the same fees for attendance and travel as are provided for
23 witnesses in civil cases in the superior court. In cases of contumacy or refusal to obey the command
24 of the subpoena so issued, the superior court shall have jurisdiction upon application of the director
25 with proof by affidavit of the fact, to issue a rule or order returnable in not less than two (2) nor
26 more than five (5) days directing such person to show cause why he or she should not be adjudged
27 in contempt.

28 (c) Upon return of such order, the justice before whom the matter is brought for hearing
29 shall examine under oath such person, and such person shall be given an opportunity to be heard,
30 and if the justice shall determine that this person has refused without reasonable cause or legal
31 excuse to be examined or to answer a legal or pertinent question, he or she may impose a fine upon
32 this offender or forthwith commit the offender to the adult correctional institutions until he or she
33 submits to do the act which he or she was so required to do, or is discharged according to law.

1 SECTION 5. 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 -- PROCEDURE GENERALLY --
EVIDENCE

1 This act would prohibit the use of illegally seized evidence in any civil or administrative
2 hearing instituted by the state or any agency or subdivision thereof, would preclude the use of any
3 evidence seized by conservation officers, department of environmental officers or any other peace
4 officer in any administrative hearing alleging a violation of fish and wildlife laws, absent probable
5 cause, would limit administrative penalties imposed in a fish wildlife civil violations to five
6 hundred dollars (\$500), would establish a forfeiture procedure, to include notice requirements,
7 burdens of proof, for any petition to seize and forfeit property, including marine wildlife, and
8 mandates that hearing officers assigned to hear and decide violations of fish and wildlife laws,
9 exercise their knowledge and decide constitutional issues, including those related probable cause
10 and search and seizure.

11 This act would take effect upon passage.

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