

2016 -- S 2938 SUBSTITUTE A

LC005570/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO CRIMINAL PROCEDURE -- SENTENCE AND EXECUTION

Introduced By: Senators McCaffrey, Conley, Lombardi, Lynch Prata, and Metts

Date Introduced: May 03, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

- 1 SECTION 1. Sections 12-19-8, 12-19-9, 12-19-14, 12-19-15, 12-19-19 and 12-19-34 of
2 the General Laws in Chapter 12-19 entitled "Sentence and Execution" are hereby amended to
3 read as follows:
- 4 **12-19-8. Suspension of sentence and probation by superior or district court. --** (a)
5 Application. - Except where the suspension of sentence shall otherwise be prohibited by law, and
6 subject to the purposes and limits imposed by this section and §12-19-8.1, whenever any
7 defendant shall appear for sentence before the superior or district court, the court may impose a
8 sentence and suspend the execution of the sentence, in whole or in part, or place the defendant on
9 probation without the imposition of a suspended sentence. The suspension shall place the
10 defendant on probation for the time ~~and on any terms and conditions~~ of probation that the court
11 may fix and pursuant to the terms and conditions set by §12-19-8.1.
- 12 (b) Duration. - The period of probation for a felony shall be set for a period of time as
13 required by law, or in accordance with judicial sentencing benchmarks. ~~, where no sentence is~~
14 ~~imposed or where sentence is entirely suspended,~~ The period of probation for a misdemeanor may
15 be for any period up to the maximum time of sentence provided by applicable statutes. Where
16 sentence is imposed and suspended in part, the term ordered to be served and the period of
17 probation together shall not exceed the maximum time of sentence provided by applicable
18 statutes.
- 19 (c) ~~At any time during the term of a sentence imposed, the probation and parole unit of~~

~~the department of corrections may seek permission of the superior or district court to modify a defendant's conditions of probation set at the time of sentence by either imposing additional conditions of probation or removing previously imposed conditions of probation to provide for more effective supervision of the defendant. Failure of the defendant to comply with modified conditions of probation may result in a violation of probation being filed pursuant to § 12-19-9.~~

12-19-9. Violation of terms of probation -- Notice to attorney general -- Revocation or continuation of suspension. -- (a) Whenever any person who has been placed on probation pursuant to § 12-9-8 violates the terms and conditions of his or her probation as fixed by the court, the police or the probation authority shall inform the attorney general of the violation, and the attorney general shall cause the defendant to appear before the court. The department of corrections ~~court may request the~~ division of ~~field~~ rehabilitative services ~~to~~ shall promptly render a report relative to the conduct of the defendant, ~~and, pending receipt of the report, and the information contained in any report under §12-13-24.1. The division of rehabilitative services may recommend that the time served up to that point is a sufficient response to a violation that is not a new alleged crime. The court~~ may order the defendant held without bail for a period not exceeding ten (10) days, excluding Saturdays, Sundays, and holidays.

(b) The court shall conduct a hearing within thirty (30) days of arrest unless waived by the defendant to determine whether the defendant has violated the terms and conditions of his or her probation, at which hearing the defendant shall have the opportunity to be present and to respond. Upon a determination by a fair preponderance of the evidence that the defendant has violated the terms and conditions of his or her probation the court, in open court and in the presence of the defendant, may:

(1) Remove ~~remove~~ the suspension and order the defendant committed on the sentence previously imposed, or on a lesser sentence, ~~or;~~

(2) Impose ~~impose~~ a sentence if one has not been previously imposed, ~~or may;~~

(3) Stay all or a portion of the sentence imposed after removal of the suspension;

(4) Continue ~~continue~~ the suspension of a sentence previously imposed, ~~as to the court may seem just and proper; or~~

(5) Convert a sentence of probation without incarceration to a suspended sentence.

(c) The court shall sentence for a violation under subsection (b) of this section in accordance with judicial sentencing benchmarks.

12-19-14. Violation of terms of probation -- Notice to court -- Revocation or continuation of suspension. -- (a) Whenever any person, who has been placed on probation by virtue of the suspension of execution of his or her sentence pursuant to § 12-19-13, violates the

1 terms and conditions of his or her probation as fixed by the court, the police or department of
2 corrections division of ~~field~~ rehabilitative services shall cause the defendant to appear before the
3 court. The ~~court may require the~~ division of ~~field~~ rehabilitative services ~~to~~ shall promptly render a
4 written report relative to the conduct of the defendant, ~~and, pending receipt of the report, and the~~
5 information contained in any report under §12-13-24.1. The division of rehabilitative services
6 may recommend that the time served up to that point is a sufficient response to a violation that is
7 not a new alleged crime. The court may order the defendant held without bail for a period not
8 exceeding ten (10) days excluding Saturdays, Sundays, and holidays.

9 (b) The court shall conduct a hearing within thirty (30) days of arrest unless waived by
10 the defendant to determine whether the defendant has violated the terms and conditions of his or
11 her probation, at which hearing the defendant shall have the opportunity to be present and to
12 respond. Upon a determination by a fair preponderance of the evidence that the defendant has
13 violated the terms and conditions of his or her probation the court, in open court and in the
14 presence of the defendant, may as to the court may seem just and proper:

15 (1) Revoke ~~revoke~~ the suspension and order the defendant committed on the sentence
16 previously imposed, or on a lesser sentence, ~~or may continue the suspension as to the court may~~
17 ~~seem just and proper;~~

18 (2) Impose a sentence if one has not been previously imposed;

19 (3) Stay all or a portion of the sentence imposed after removal of the suspension;

20 (4) Continue the suspension of a sentence previously imposed; or

21 (5) Convert a sentence of probation without incarceration to a suspended sentence.

22 **12-19-15. Term of probation -- Power to commit after termination of original**
23 **sentence. --** The power of the court to commit the defendant shall not be deemed to terminate
24 with the termination of the period of the original sentence, but the court shall have power to
25 enforce the sentence even though the original period of the sentence has expired. The term of the
26 suspended sentence may be longer or shorter or for the same time as the probation period, and the
27 time during which the defendant is on probation shall not be deemed by §§ 12-19-13 -- 12-19-17
28 to be a part of the term of his or her sentence, although the court, in its discretion, may give
29 consideration to the probationer's conduct during the probationary period in imposing a sanction
30 or enforcing the sentence originally imposed, or any lesser sentence.

31 **12-19-19. Sentencing on plea of guilty or nolo contendere -- Deferment of sentence. -**
32 **z** (a) Whenever any person is arraigned before the superior court and pleads guilty or nolo
33 contendere, he or she may be at any time sentenced by the court; provided, that if at any time the
34 court formally defers sentencing then the person and the ~~attorney-general~~ court shall enter into a

1 written deferral agreement to be filed with the clerk of the court. When a court formally defers
2 sentence, the court may only impose sentence within up to five (5) years from and after the date
3 of the written deferral agreement, unless during the ~~five (5) year~~ required period, the person shall
4 be declared to have violated the terms and conditions of the deferment pursuant to subsection (b)
5 of this section in which event the court may impose sentence.

6 (b) ~~It shall be an express condition of any deferment of sentence in accordance with this~~
7 ~~section~~ The court may require that the person agreeing to said deferment of sentence shall not
8 violate any condition of the written deferral agreement ~~at all times during the period of deferment~~
9 ~~keep the peace and be of good behavior~~. A violation of ~~this express condition or~~ any other
10 condition set forth by ~~either the court or~~ the written deferral agreement shall violate the terms and
11 conditions of the deferment of sentence and the court may impose a sanction or impose sentence.
12 The determination of whether a violation has occurred shall be made by the court in accordance
13 with procedures relating to violation of probation in court rules and §§ 12-19-2 and 12-19-14.

14 (c) If a person, after the completion of the ~~five (5) year~~ deferment period is determined
15 by the court to have complied with all of the terms and conditions of the written deferral
16 agreement, then the person shall be exonerated of the charges for which sentence was deferred
17 and records relating to the criminal complaint, information or indictment shall be sealed pursuant
18 to the provision of § 12-1-12. Further, if any record of the criminal complaint, information or
19 indictment has been entered into a docket or alphabetical index, whether in writing or electronic
20 information storage or other data compilation system, all references to the identity of the person
21 charged by the complaint shall be sealed.

22 **12-19-34. Priority of restitution payments to victims of crime.** -- (a) (1) If a person,
23 pursuant to §§ 12-19-32, 12-19-32.1, or 12-19-33, is ordered to make restitution in the form of
24 monetary payment the court may order that it shall be made through the administrative office of
25 state courts which shall record all payments and pay the money to the person injured in
26 accordance with the order or with any modification of the order; provided, in cases where ~~court~~
27 ~~ordered restitution totals less than two hundred dollars (\$200)~~ the court determines that the
28 defendant has the present ability to make full restitution, payment shall be made at the time of
29 sentencing ~~if the court determines that the defendant has the present ability to make restitution~~.

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

33 (i) Upon determination of restitution, court ordered restitution payments shall be paid
34 first to persons injured until such time as the court's restitution is fully satisfied;

1 (ii) Followed by the payment of court costs, fines, fees, and assessments related to
2 prosecution.

3 (3) Notwithstanding any other provision of law, any interest which has been accrued by
4 the restitution account in the central registry shall be deposited on a regular basis into the crime
5 victim compensation fund, established by chapter 25 of this title. In the event that the office of the
6 administrator of the state courts cannot locate the person or persons to whom restitution is to be
7 made, the principal of the restitution payment shall escheat to the state pursuant to the provisions
8 of chapter 8-12.

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

11 (1) The defendant is incarcerated or on home confinement [or has completed probation](#)
12 [without completing restitution](#) but is able to pay some portion of the restitution; or

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

14 (c) The state may maintain a civil action to place a lien on the personal or real property
15 of a defendant who is assessed restitution, as well as to seek wage garnishment, [and/or seek](#)
16 [enforcement of civil judgment entered in accordance with §12-28-5.1](#) consistent with state and
17 federal law.

18 SECTION 2. Chapter 12-19 of the General Laws entitled "Sentence and Execution" is
19 hereby amended by adding thereto the following section:

20 **12-19-8.1. Conditions of probation.** -- [\(a\) The following shall constitute basic](#)
21 [conditions of probation applicable to all defendants upon whom a period of probation has been](#)
22 [imposed:](#)

23 [\(1\) Obey all laws;](#)

24 [\(2\) Report to the probation officer and parole officer as directed;](#)

25 [\(3\) Remain within the state of Rhode Island except with the prior approval, specifically](#)
26 [or as an agreed routine, of the probation and parole office;](#)

27 [\(4\) Notify the probation and parole officer immediately of any change of address,](#)
28 [telephone number, or employment;](#)

29 [\(5\) Make every effort to keep steadily employed or attend school or vocational training;](#)

30 [\(6\) Waive extradition from anywhere in the United States to Rhode Island, if required to](#)
31 [appear in any Rhode Island court;](#)

32 [\(7\) Provide a DNA sample if required by §§12-1.5-7 and 12-1.5-8;](#)

33 [\(8\) Pay restitution, court costs, and fines, if assessed, in one or several sums, based on the](#)
34 [defendant's ability to pay; and](#)

1 (9) Submit to a risk and needs assessment.

2 (b) Special probation conditions related to community service, computer restrictions, no
3 contact orders, or any other conditions deemed just and reasonable may be imposed at the
4 discretion of the court.

5 (c) At any time during the term of a sentence imposed, the probation and parole unit of
6 the department of corrections may seek permission of the superior or district court to modify a
7 defendant's basic conditions or special conditions of treatment or counseling by either imposing
8 additional conditions or removing previously imposed conditions of probation to provide for
9 more effective supervision of the defendant.

10 (d) Failure of the defendant to comply with modified conditions of probation constitutes a
11 violation.

12 **12-19-40. Severability. --** If any provision of this chapter or its application to any person
13 or circumstances is held invalid, that invalidity shall not affect other provisions or applications of
14 the chapter which can be given effect without the invalid provision or application, and to this end
15 the provisions of this chapter are declared to be severable.

16 SECTION 3. This act shall take effect upon passage and shall be applicable to all cases
17 pending as of the effective date.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE -- SENTENCE AND EXECUTION

- 1
- This act would make several changes to the sentencing and execution guidelines for
- 2
- purposes of criminal procedure and would add new conditions of criminal probation.
- 3
- This act would take effect upon passage and would be applicable to all cases pending as
- 4
- of the effective date.

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