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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - COURTS

Introduced By: Representatives O'Grady, Tanzi, Newberry, Marszalkowski, and Handy

Date Introduced: February 28, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 8-2-11.1, 8-2-39, 8-2-39.1 and 8-2-39.2 of the General Laws in
2 Chapter 8-2 entitled "Superior Court" are hereby amended to read as follows:

3 **8-2-11.1. Administrator/magistrate.**

4 (a) Any person holding the position of administrative clerk in the superior court who is a
5 member of the bar of Rhode Island may be ~~appointed~~ nominated administrator/magistrate for a
6 term of ten (10) years and until a successor is appointed and qualified, ~~by the presiding justice by~~
7 the governor, on the basis of merit, from a list submitted by the judicial nominating commission,
8 with the advice and consent of the senate, ~~in his or her capacity as administrative judge~~. Nothing
9 herein shall be construed to prohibit the ~~assignment~~ renomination of an administrator/magistrate
10 to more than one such term, subject to the advice and consent of the senate. Any magistrate in
11 service as of January 1, 2008 who serves at the pleasure of the presiding justice of the superior
12 court may be ~~appointed~~ nominated by the governor for a term of ten (10) years with the advice
13 and consent of the senate and until a successor is ~~appointed~~ nominated and qualified.

14 (b) (1) The administrator/magistrate shall have the power to hear and determine such
15 matters as may be assigned to the administrator/magistrate by the presiding justice all to the same
16 effect as if done by a justice of the superior court.

17 (2) Without limiting the generality of the foregoing powers and authority, the
18 administrator/magistrate is authorized and empowered to hear and determine motions in civil and
19 criminal proceedings, formal and special causes, to conduct arraignments, to grant or deny bail, to

1 accept pleas of not guilty, guilty, or nolo contendere, and to impose sentence on a plea of guilty
2 or nolo contendere, all to the same effect as if done by a justice of the superior court.

3 (c) The administrator/magistrate may be authorized:

4 (1) To regulate all proceedings before him or her;

5 (2) To do all acts and take all measures necessary or proper for the efficient performance
6 of his or her duties;

7 (3) To require the production before him or her of books, papers, vouchers, documents,
8 and writings;

9 (4) To rule upon the admissibility of evidence;

10 (5) To issue subpoenas for the appearance of witnesses, to put witnesses on oath, to
11 examine them, and to call parties to the proceeding and examine them upon oath;

12 (6) To adjudicate a person in contempt and to order him or her imprisoned for not more
13 than seventy-two (72) hours, pending review by a justice of the court, for failure to appear in
14 response to a summons or for refusal to answer questions or produce evidence or for behavior
15 disrupting a proceeding;

16 (7) To adjudicate a party in contempt and to order him or her imprisoned for not more
17 than seventy-two (72) hours, pending review by a justice of the court, for failure to comply with a
18 pending order to provide payment or to perform any other act; and

19 (8) To issue a *capias* and/or body attachment upon the failure of a party or witness to
20 appear after having been properly served and, should the court not be in session, the person
21 apprehended may be detained at the adult correctional institution, if an adult, or at the Rhode
22 Island training school for youth, if a child, until the next session of the court.

23 (d) A party aggrieved by an order entered by the administrator/magistrate shall be entitled
24 to a review of the order by a justice of the superior court. Unless otherwise provided in the rules
25 of procedure of the court, the review shall be on the record and appellate in nature. The court
26 shall, by rules of procedure, establish procedures for review of orders entered by the
27 administrator/magistrate, and for enforcement of contempt adjudications of the
28 administrator/magistrate.

29 (e) Final orders of the superior court entered in a proceeding to review an order of the
30 administrator/magistrate may be appealed to the supreme court.

31 (f) The administrator/magistrate shall be:

32 (1) Governed by the commission on judicial tenure and discipline, chapter 16, of this
33 title, in the same manner as justices and judges;

34 (2) Subject to all provisions of the canons of judicial ethics;

1 (3) Subject to all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

2 **8-2-39. General magistrate -- Appointment, duties and powers.**

3 (a) There is hereby created within the superior court the position of general magistrate
4 who shall be ~~appointed~~ nominated by the ~~presiding justice of the superior court~~ governor, on the
5 basis of merit, from a list submitted by the judicial nominating commission, with the advice and
6 consent of the senate, for a term of ten (10) years and until a successor is appointed and qualified.
7 Nothing herein shall be construed to prohibit the ~~assignment~~ renomination of the general
8 magistrate to more than one such term, subject to the advice and consent of the senate. The
9 person appointed to serve as general magistrate shall be a member of the bar of Rhode Island. The
10 powers and duties of the general magistrate shall be prescribed in the order appointing him or her.

11 (b) (1) The general magistrate shall assist the court in:

12 (i) The determination of, monitoring, collection, and payment of restitution and court
13 ordered fines, fees, and costs or the ordering of community service in lieu of or in addition to the
14 payment of restitution, fines, fees, and costs, consistent with other provisions of the general laws;

15 (ii) The determination and payment of claims under the violent crimes indemnity fund for
16 the Criminal Injuries Compensation Act of 1972, chapter 25 of title 12;

17 (iii) The determination and payment of claims from the Criminal Royalties Distribution
18 Act of 1983, chapter 25.1 of title 12; and

19 (iv) Such other matters as the presiding justice of the superior court determines are
20 necessary.

21 (2) The chief justice of the supreme court, with the consent of the presiding justice and, if
22 applicable, the chief judge of a particular court, may assign the general magistrate to serve as a
23 magistrate in any court of the unified system. When the general magistrate is so assigned he or
24 she shall be vested, authorized, and empowered with all the powers belonging to the magistrate
25 position to which he or she is specially assigned.

26 (c) The general magistrate will be empowered to hear all motions, pretrial conferences,
27 arraignments, probable cause hearings, bail hearings, bail and probation revocation hearings, and
28 to review all such matters including, but not limited to the above, and to modify the terms and
29 conditions of probation and other court-ordered monetary payments including, but not limited to,
30 the extension of time for probation and court-ordered monetary payments as provided by law.
31 The general magistrate shall have the power to take testimony in connection with all matters set
32 forth herein.

33 (d) The general magistrate may be authorized:

34 (1) To regulate all proceedings before him or her;

1 (2) To do all acts and take all measures necessary or proper for the efficient performance
2 of his or her duties;

3 (3) To require the production before him or her of books, papers, vouchers, documents,
4 and writings;

5 (4) To rule upon the admissibility of evidence;

6 (5) To issue subpoenas for the appearance of witnesses, to put witnesses on oath, to
7 examine them, and to call parties to the proceeding and examine them upon oath;

8 (6) To adjudicate a person in contempt and to order him or her imprisoned for not more
9 than seventy-two (72) hours, pending review by a justice of the relevant court, for failure to
10 appear in response to a summons or for refusal to answer questions or produce evidence or for
11 behavior disrupting a proceeding;

12 (7) To adjudicate a party in contempt and to order him or her imprisoned for not more
13 than seventy-two (72) hours, pending review by a justice of the relevant court, for failure to
14 comply with a pending order to provide payment or to perform any other act; and

15 (8) To issue a *capias* and/or body attachment upon the failure of a party or witness to
16 appear after having been properly served and, should the court not be in session, the person
17 apprehended may be detained at the adult correctional institutions, if an adult, or at the Rhode
18 Island training school for youth, if a child, until the next session of the court.

19 (e) A party aggrieved by an order entered by the general magistrate shall be entitled to a
20 review of the order by a justice of the relevant court. Unless otherwise provided in the rules of
21 procedure of the court, such review shall be on the record and appellate in nature. The court shall,
22 by rules of procedure, establish procedures for review of orders entered by a general magistrate,
23 and for enforcement of contempt adjudications of a general magistrate.

24 (f) Final orders of the superior or family court entered in a proceeding to review an order
25 of a general magistrate may be appealed to the supreme court. Final orders of the district court
26 entered in a proceeding to review an order of the general magistrate may be appealed to the
27 superior court.

28 (g) The general magistrate shall:

29 (1) Receive all credits and retirement allowances as afforded justices under chapter 3 of
30 this title and any other applicable law, including without limitation, § 8-3-16;

31 (2) Receive a salary equivalent to that of a district court judge;

32 (3) Be governed by the commission on judicial tenure and discipline, chapter 16, of this
33 title, in the same manner as justices and judges;

34 (4) Be subject to all provisions of the canons of judicial ethics or code of judicial

1 conduct;

2 (5) Be subject to all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

3 (h) The provisions of this section shall be afforded liberal construction.

4 (i) The presiding justice of the superior court shall initially appoint such support staff as
5 may be necessary, relating to preparation, investigation, and implementation of the general
6 magistrate's functions. Effective November 15, 1993, the support staff shall be placed under the
7 supervision and management of the superior court, and new appointments or personnel changes in
8 the support staff shall be subject to the directions and approval of the superior court, consistent
9 with any applicable collective bargaining agreements. The general magistrate shall have the
10 power and authority to issue subpoenas and to compel the attendance of witnesses at any place
11 within the state, to administer oaths and to require testimony under oath. The general magistrate,
12 or his or her designee, may serve his or her process or notices in a manner provided for the
13 service of process and notice in civil or criminal actions in accordance with the rules of court.

14 **8-2-39.1. Special magistrate.**

15 There is hereby created within the superior court the position of special magistrate, who
16 shall be ~~appointed~~ nominated by the ~~presiding justice of the superior court~~ governor, on the basis
17 of merit, from a list submitted by the judicial nominating commission, with the advice and
18 consent of the senate, for a period of ten (10) years, and until a successor is appointed and
19 qualified. Nothing contained herein shall be construed to prohibit the ~~reappointment~~ renomination
20 of a special magistrate for one or more additional ten (10) year terms, subject to the advice and
21 consent of the senate. The person appointed to serve as special magistrate shall be a member of
22 the bar of the state of Rhode Island. The special magistrate shall have the duties, responsibilities,
23 powers and benefits as authorized in § 8-2-39.

24 **8-2-39.2. Drug court magistrate -- Appointment, duties and powers.**

25 (a) For the purposes of this chapter:

26 (1) "Non-violent" means and includes all charges that are not crimes of violence, the
27 following being a list of all charges considered to be crimes of violence for the purposes of this
28 section: murder, manslaughter, first-degree arson, kidnapping with intent to extort, robbery, first-
29 degree sexual assault, second-degree sexual assault, first- and second-degree child molestation,
30 assault, assault with intent to murder, assault with intent to rob, assault with intent to commit
31 first-degree sexual assault, entering a dwelling house with intent to commit murder, robbery, or
32 sexual assault.

33 (2) "Drug-addicted person" means a person who exhibits a maladaptive pattern of
34 behavior resulting from drug use, including one or more of the following: impaired control over

1 drug use; compulsive use; and/or continued use despite harm, and craving.

2 (b) There is hereby created within the superior court the position of drug court magistrate
3 who shall be ~~appointed~~ nominated by the ~~presiding justice of the superior court~~ governor, on the
4 basis of merit, from a list submitted by the judicial nominating commission, with the advice and
5 consent of the senate. The persons appointed to serve as drug court magistrates shall be members
6 of the bar of Rhode Island. The powers and duties of the drug court magistrate shall be prescribed
7 in the order appointing him or her in addition to those described herein.

8 The drug court magistrate's term shall be ten (10) years and until a successor is ~~appointed~~
9 nominated and qualified. Nothing in this section shall prohibit a drug court magistrate from being
10 ~~reappointed~~ renominated for one or more additional ten-year (10) terms by the ~~presiding justice of~~
11 ~~the superior court~~ governor, with the advice and consent of the senate. He or she shall receive a
12 salary equivalent to that received by the special magistrate assigned to the superior court. The
13 drug court magistrate shall preside over the adult drug court. The adult drug court program shall
14 combine the coercive powers of the court with a therapeutic regimen in order to rehabilitate drug
15 addicted defendants.

16 (c) The drug court magistrate shall be empowered to hear and decide as a superior court
17 justice all matters relating to those adult offenders who come before the jurisdiction of the
18 superior court on any offense relating to the offender's participation in the adult drug court. In
19 addition, the drug court magistrate shall have the power to impose a period of incarceration upon
20 a plea of guilty or nolo contendere, and also have the power to confine any person who has been
21 found to be in violation of any conditions previously imposed by the superior court.

22 (d) The drug court magistrate shall make the final determination as to whether a
23 defendant is admitted into the program. Individuals meeting the following criteria shall be
24 screened by staff working at the office of the attorney general upon the department's own referral;
25 upon a request by counsel entered on behalf of a defendant; upon request by a judge of the
26 superior or district court, or, in the case of a person waivable by the family court, by a judge of
27 that court; or the department of corrections for admittance into the adult drug court:

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

30 (2) The individual has no pending charges for felony crimes of violence.

31 (3) The individual has no pending charges for delivery of a controlled substance.

32 (4) The defendant is a drug-addicted person.

33 (e) All individuals accepted into drug court will be bound by a drug court contract, as
34 defined by the adult drug court, that 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 (f) 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 (g) The drug court magistrate and/or the presiding justice of the superior court may fix
9 the venue of any person who is before the superior court as a participant in the adult drug court or
10 who is alleged to be a sexual predator, and who has filed an objection to community notification.

11 (h) In addition, at the discretion of the presiding justice of the superior court, the drug
12 court magistrate shall have the duties, responsibilities, and powers authorized in subsections 8-2-
13 39(b), (c) and (d).

14 (i) The drug court magistrate shall be governed by the commission on judicial tenure and
15 discipline, chapter 16 of title 8, in the same manner as justices and judges; shall be subject to all
16 provisions of the canons of judicial ethics or code of judicial conduct; and shall be subject to all
17 criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

18 (j) A party aggrieved by an order entered by the drug court magistrate shall be entitled to
19 a review of the order by a justice of the superior court. Unless otherwise provided in the rules of
20 procedure of the court, such review shall be on the record and appellate in nature. The superior
21 court shall, by rules of procedure, establish procedures for reviews of orders entered by a drug
22 court magistrate, and for enforcement of contempt adjudications of a drug court magistrate.

23 SECTION 2. Sections 8-8-8.1 and 8-8-16.2 of the General Laws in Chapter 8-8 entitled
24 "District Court" are hereby amended to read as follows:

25 **8-8-8.1. Administrator/clerk -- Magistrate.**

26 (a) Administrator/clerk. There shall be a district court administrator/clerk who shall be
27 appointed by the chief judge in his or her capacity as administrative head of the court, and who
28 shall hold office at the pleasure of the administrative judge. The administrator/clerk shall perform
29 such duties and attend to such matters as may be assigned to the administrator/clerk by the
30 administrative judge, other than those duties assigned to the chief clerk in § 8-8-19. Said duties
31 may be assigned by the chief judge.

32 (b) Magistrate. Any person ~~holding the position of district court administrator/clerk~~ who
33 is a member of the bar of Rhode Island may be ~~appointed~~ nominated district court magistrate by
34 the ~~chief judge in his or her capacity as administrative head of the court,~~ governor, on the basis of

1 [merit, from a list submitted by the judicial nominating commission](#), subject to the advice and
2 consent of the senate. The district court magistrate shall hold said office for a term of ten (10)
3 years and until a successor is appointed and qualified; and the magistrate shall retain whatever
4 right he or she may have to the position of district court administrator/clerk pursuant to this
5 section. Nothing herein shall be construed to prohibit the ~~appointment~~ [renomination](#) of the
6 magistrate for more than one term, subject to the advice and consent of the senate. Any person
7 holding office of district court magistrate on July 1, 1999 may continue in full authority in said
8 position until such time as ~~an appointment~~ [a nomination](#) is made and the nominee qualified
9 pursuant to this subsection.

10 (c) The district court magistrate shall have the power to hear and determine such matters
11 as may be assigned to the district court magistrate by the chief judge all to the same effect as if
12 done by a judge of the district court, including but not limited to:

13 (1) Matters relating to the determination of, monitoring, collection, and payment of
14 restitution and court ordered fines, fees, and costs or the ordering of community service in lieu of
15 or in addition to the payment of restitution, fines, fees, and costs, consistent with other provisions
16 of the general laws;

17 (2) Arraignments and pretrial motions in misdemeanor, petty misdemeanor, violation,
18 and ordinance cases and initial appearances and probable cause hearings in felony cases;

19 (3) Bail hearings pursuant to R.I. Const., Art. I, Sec. IX and all other bail matters
20 pursuant to chapter 13 of title 12 and the rules of criminal procedure, including but not limited to
21 motions to modify bail, bail revocation hearings, bail forfeiture hearings, and bail source
22 hearings;

23 (4) All matters relating to fugitives from justice pursuant to chapter 9 of title 12;

24 (5) Probation revocation hearings;

25 (6) All matters relating to small claims and consumer claims pursuant to chapter 16 of
26 title 10, including any pretrial motions including motions relating to the special service of
27 process, the entry of defaults and default judgments, the trial of such cases and the entry of
28 judgment after such trials, and all matters relating to the enforcement of such judgments,
29 including but not limited to the ordering of installment payments and trustee process; and

30 (7) Complaints for judicial review of the decision of an administrative agency pursuant to
31 chapter 35 of title 42 by making proposed findings of fact and recommendations for the
32 disposition of the complaints to a judge of the court. Any party may object to any portion of the
33 magistrate's proposed findings and recommendations within ten (10) days after receipt of a copy
34 thereof. That party shall file with the clerk of the sixth division of the district court and serve on

1 all parties written objections which shall specifically identify the portions of the proposed
2 findings and recommendations to which objection is made and the basis for the objection. A
3 judge shall make a de novo determination of those portions to which objection is made and may
4 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
5 magistrate. Absent a timely objection filed in accordance with this subdivision, the proposed
6 prevailing party shall, upon expiration of the ten (10) days following the service of the
7 magistrate's proposed findings and recommendations, submit a proposed order for signature of
8 the judge to whom the case has been assigned.

9 (d) The magistrate may be authorized:

10 (1) To regulate all proceedings before him or her;

11 (2) To do all acts necessary or proper for the efficient performance of his or her duties;

12 (3) To require the production before him or her of books, papers, vouchers, documents,
13 and writings;

14 (4) To rule upon the admissibility of evidence;

15 (5) To issue subpoenas for the appearance of witnesses, to put witnesses on oath, to
16 examine them, and to call parties to the proceeding and examine them upon oath;

17 (6) To adjudicate a person in contempt and to order him or her fined or to order him or
18 her imprisoned for not more than seventy-two (72) hours, pending review by a judge of the court,
19 for failure to appear in response to a summons or for refusal to answer questions or produce
20 evidence or for behavior disrupting a proceeding or other contempt of his or her authority;

21 (7) To adjudicate a person in contempt and to order him or her fined or to order him or
22 her imprisoned for not more than seventy-two (72) hours, pending review by a judge of the court,
23 for failure to comply with a pending order to provide payment or to perform any other act;

24 (8) To issue a *capias* and/or body attachment for the failure of a party or witness to
25 appear after having been properly served or given notice by the court and, should the court not be
26 in session, the person apprehended may be detained at the adult correctional institution, if an
27 adult, or at the Rhode Island training school for youth, if a child, until the next session of the
28 court;

29 (9) To issue writs of habeas corpus to bring before him or her or a judge of the court any
30 person in jail or in prison to be examined as a witness in a suit or proceeding, civil or criminal,
31 pending before the court, or whose presence is necessary as a party or otherwise necessary so that
32 the ends of justice may be attained, and for no other purpose; and

33 (10) To issue warrants of arrest and search warrants to the same extent as an associate
34 judge of the court.

1 (e) Except as otherwise indicated, a party aggrieved by an order entered by the district
2 court magistrate shall be entitled to a review of the order, whether by appeal or otherwise, by a
3 judge of the court. The court shall, by rules of procedure, establish procedures for review of
4 contempt and adjudications of the magistrate.

5 (f) The magistrate shall be:

6 (1) Governed by the commission on judicial tenure and discipline, chapter 16 of this title,
7 in the same manner as justices and judges;

8 (2) Subject to all provisions of the canons of judicial ethics;

9 (3) Subject to all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

10 (g) The provisions of this section shall be afforded liberal construction.

11 **8-8-16.2. District court clerk/magistrate.**

12 (a) Any person who is a member of the bar of Rhode Island may be ~~appointed~~ nominated
13 district court clerk/magistrate by the ~~chief judge in his or her capacity as administrative head of~~
14 ~~the court,~~ governor, on the basis of merit, from a list submitted by the judicial nominating
15 commission, subject to the advice and consent of the senate. The district court clerk/magistrate
16 shall hold that office for a term of ten (10) years and until a successor is ~~appointed~~ nominated and
17 qualified. Nothing herein shall be construed to prohibit the ~~assignment of~~ renomination the
18 district court clerk/magistrate to more than one such term, subject to the advice and consent of the
19 senate. The district court clerk/magistrate shall have the power to hear and determine any matters
20 that may be assigned to the district court clerk/magistrate by the chief judge all to the same effect
21 as if done by a judge of the district court, including, but not limited to, matters relating to the
22 determination of, monitoring, collection and payment of restitution and court ordered fines, fees
23 and costs or the ordering of community service in lieu of or in addition to the payment of
24 restitution, fines, fees and costs, consistent with other provisions of the general laws.

25 (b) The clerk/magistrate may be authorized:

26 (1) To regulate all proceedings before him or her;

27 (2) To do all acts necessary or proper for the efficient performance of his or her duties;

28 (3) To require the production before him or her of books, papers, vouchers, documents
29 and writings;

30 (4) To rule upon the admissibility of evidence;

31 (5) To issue subpoenas for the appearance of witnesses, to put witnesses on oath, to
32 examine them and to call parties to the proceeding and examine them upon oath;

33 (6) To adjudicate a person in contempt and to order him or her fined or to order him or
34 her imprisoned for not more than seventy-two (72) hours, for failure to appear in response to a

1 summons or for refusal to answer questions or produce evidence or for behavior disrupting a
2 proceeding or other contempt of his or her authority; provided; however, that no such
3 imprisonment shall occur prior to review by a judge of the court.

4 (7) To adjudicate a person in contempt and to order him or her fined or to order him or
5 her imprisoned for not more than seventy-two (72) hours, for failure to comply with a pending
6 order to provide payment or to perform any other act; provided, however, that no such
7 imprisonment shall occur prior to review by a judge of the court.

8 (8) To issue a capias and/or body attachment for the failure of a party or witness to
9 appear after having been properly served or given notice by the court and, should the court not be
10 in session, the person apprehended may be detained at the adult correctional institutions, if an
11 adult, or at the Rhode Island training school for youth, if a child, until the next session of the
12 court;

13 (9) To issue writs of habeas corpus to bring before him or her or a judge of the court any
14 person in jail or in prison to be examined as a witness in a suit or proceeding, civil or criminal,
15 pending before the court, or whose presence is necessary as a party or otherwise necessary so that
16 the ends of justice may be attained, and for no other purpose; and

17 (10) To issue warrants of arrest and search warrants to the same extent as an associate
18 judge of the court.

19 (c) Except as otherwise indicated, a party aggrieved by an order entered by the district
20 court clerk/magistrate shall be entitled to a review of the order, whether by appeal or otherwise,
21 by a judge of the court. The court shall, by rules of procedure, establish procedures for review of
22 contempt and adjudications of the clerk/magistrate.

23 (d) The district court clerk/magistrate shall:

24 (1) Be governed by the commission on judicial tenure and discipline, pursuant to chapter
25 16 of this title, in the same manner as justices and judges;

26 (2) Be subject to all provisions of the canons of judicial ethics;

27 (3) Be subject to all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

28 (4) Receive any salary that may be established by the state court administrator pursuant to
29 § 8-15-4. The provisions of this section shall be afforded liberal construction.

30 SECTION 3. Section 8-8.2-1 of the General Laws in Chapter 8-8.2 entitled "Traffic
31 tribunal" is hereby amended to read as follows:

32 **8-8.2-1. Establishment -- Rule-making authority -- Adjudication of violations.**

33 (a) There is hereby established a traffic tribunal which shall be charged with the
34 administration and adjudication of traffic violations within its jurisdiction. The traffic tribunal

1 shall be under the supervision of the chief magistrate of the traffic tribunal, who shall be the
2 administrative head of the traffic tribunal and shall have the power to make rules for regulating
3 practice, procedure and business within the traffic tribunal. Pursuant to § 8-6-2, said rules shall be
4 subject to the approval of the supreme court. Such rules, when effective, shall supersede any
5 statutory regulation in conflict therewith. ~~Any person who has been a member of the bar of Rhode~~
6 ~~Island may be appointed chief magistrate of the traffic tribunal.~~ The chief magistrate of the traffic
7 tribunal shall be ~~appointed~~ nominated by the ~~chief justice of the supreme court,~~ governor, on the
8 basis of merit, from a list submitted by the judicial nominating commission, with the advice and
9 consent of the senate, for a period of ten (10) years and until a successor is ~~appointed~~ nominated
10 and qualified. Nothing contained herein shall be construed to prohibit the ~~reappointment~~
11 renomination of the chief magistrate for one or more ten (10) year terms subject to the advice and
12 consent of the senate. Compensation for the chief magistrate shall be equal to that of an associate
13 judge of the district court.

14 (b) The judges and magistrates of the traffic tribunal shall hear and determine cases as
15 provided by law. No district court judge appointed pursuant to chapter 8 of this title shall be
16 assigned to perform duties of a judge or magistrate of the traffic tribunal under this chapter. The
17 chief magistrate of the traffic tribunal may assign a judge or magistrate who is authorized to hear
18 and decide cases in the traffic tribunal to serve as administrative judge or magistrate of the traffic
19 tribunal and the administrative judge or magistrate shall perform such administrative duties as
20 may be delegated to him or her by the chief magistrate. Once assigned to the position, the
21 administrative judge or magistrate shall hold said administrative position for the remainder of his
22 or her respective term as a judge or magistrate of the traffic tribunal.

23 (c) (1) Those judges of the administrative adjudication court in active service on July 1,
24 1999 shall serve within the traffic tribunal. Whenever the total number of judges and magistrates
25 in the traffic tribunal exclusive of the chief magistrate shall be less than seven (7), the chief
26 justice of the supreme court, with the advice and consent of the senate, may, as needed, assign a
27 duly qualified member of the bar of this state to act as a magistrate to fill such vacancy and shall
28 submit his or her name to the senate for confirmation. In the event of a vacancy in the position of
29 chief magistrate, the chief justice of the supreme court shall appoint a successor in accordance
30 with subsection 8-8.2-1(a). Any magistrate assigned under this section shall serve a term of ten
31 (10) years and until a successor is appointed and qualified, and shall be in the unclassified service
32 of the state. Nothing herein shall be construed to prohibit the assignment of a magistrate to more
33 than one such term, subject to the advice and consent of the senate. Compensation for any such
34 magistrate shall in no event be equal to or more than that of an associate judge of the district

1 court. Magistrates of the traffic tribunal shall participate in the state retirement system in the same
2 manner as all members of the unclassified service.

3 (2) If any judge of the traffic tribunal shall retire, or a vacancy becomes available through
4 death, disability or any other reason, the position shall be filled by a magistrate consistent with
5 the provisions of this section.

6 (d) Each judge and magistrate of the traffic tribunal shall devote full time to his or her
7 judicial duties, except as may be otherwise provided by law. He or she shall not practice law
8 while holding office, nor shall he or she be a partner or associate of any person in the practice of
9 law.

10 (e) Judges and magistrates of the traffic tribunal shall be subject to the provisions of R.I.
11 Const. Art. XI; to the code of judicial conduct or successor code promulgated by the supreme
12 court of this state, to the jurisdiction of the Commission on Judicial Tenure and Discipline in
13 accordance with chapter 16 of this title; and to the administrative authority and control of the
14 chief justice of the supreme court in accordance with chapter 15 of this title, except that §§ 8-15-3
15 and 8-15-3.1 shall not apply to judges of the traffic tribunal.

16 (f) The traffic tribunal shall be a tribunal of record and shall have a seal with such words
17 and devices as it shall adopt.

18 (g) Judges and magistrates of the traffic tribunal shall have the power to administer oaths
19 and affirmations.

20 (h) Administrative/supervisory officials.

21 (1) There shall be an assistant to the administrative magistrate of the traffic tribunal who
22 shall be appointed by and serve at the pleasure of the chief magistrate and who shall perform such
23 clerical and administrative duties as may be assigned to him or her by the chief magistrate of the
24 traffic tribunal and the administrative judge or magistrate of the traffic tribunal. The assistant to
25 the administrative judge or magistrate shall have the power to administer oaths and affirmations
26 within the state.

27 (2) There shall be a clerk of the traffic tribunal who shall be appointed by and serve at the
28 pleasure of the chief magistrate of the traffic tribunal; provided, however, that, effective July 1,
29 1999, the first clerk of the traffic tribunal shall be that person holding the position of
30 administrator/clerk of the administrative adjudication court as of May 1, 1998, and that person
31 shall hold office for the balance of a term of twelve (12) years which began on September 1,
32 1992, without the necessity of appointment by the governor or advice and consent of the senate.
33 The clerk of the traffic tribunal shall exercise his or her functions under the direction and control
34 of the chief magistrate of the traffic tribunal and the administrative judge or magistrate of the

1 traffic tribunal. The clerk of the traffic tribunal shall have the power to administer oaths and
2 affirmations within the state.

3 (i) Clerical Personnel/Court Recorders.

4 (1) The chief magistrate of the traffic tribunal shall appoint deputy clerks and assistance
5 clerks for the traffic tribunal to serve at his or her pleasure. All such clerks may administer oaths
6 and affirmations within the state.

7 (2) The chief magistrate of the traffic tribunal shall appoint sufficient court recorders to
8 enable all proceedings to be recorded by electronic means and who shall assist in such other
9 clerical duties as may be prescribed from time to time by the chief magistrate of the traffic
10 tribunal.

11 (3) The chief magistrate of the traffic tribunal shall employ such clerical assistants in
12 addition to deputy clerks as may be required in the traffic tribunal to perform clerical duties.

13 SECTION 4. Sections 8-10-3.1 and 8-10-3.2 of the General Laws in Chapter 8-10
14 entitled "Family Court" are hereby amended to read as follows:

15 **8-10-3.1. Magistrates -- Appointment, duties, and powers.**

16 (a) The ~~chief judge of the family court~~ governor may ~~appoint~~ nominate magistrates, with
17 the advice and consent of the senate, to assist the court in the conduct of its business. A person
18 ~~appointed~~ nominated to serve as a magistrate shall be a member of the bar of Rhode Island and
19 shall be chosen on the basis of merit, from a list submitted by the judicial nominating
20 commission. The powers and duties of magistrates shall be prescribed in the order appointing
21 them.

22 (b) In addition, magistrates may assist the court in:

23 (1) the enforcement and implementation of chapter 23.1 of title 15,

24 (2) the determination of matters that come before the court pursuant to § 8-10-4, chapter
25 1 of title 14, chapters 5, 7, 8, 9, 10 and 16 of title 15, chapter 19 of title 16, chapter 11 of title 40,
26 and chapter 5 of title 40.1.

27 Magistrates shall be empowered to hear and determine all motions, pretrial conferences,
28 arraignments of juvenile offenders, probable cause hearings, and review of all such matters,
29 including but not limited to, the temporary placement, custody, disposition and adoption of
30 children, orders of support, final divorce decrees, and the taking of testimony in conducting all
31 hearings relative thereto subject to the review provided for in subsection (d).

32 (c) The magistrates shall serve a term of ten (10) years and until a successor is ~~appointed~~
33 nominated and qualified and his or her powers and duties shall be prescribed in the order
34 appointing him or her or in the rules of procedure of the family court. Any magistrate in service

1 as of January 1, 2008 who serves at the pleasure of the chief judge of the family court may be
2 ~~appointed~~ nominated by the governor for a term of ten (10) years with the advice and consent of
3 the senate and until a successor is ~~appointed~~ nominated and qualified. Nothing herein shall be
4 construed to prohibit the ~~assignment~~ renomination of a magistrate to more than one such term,
5 subject to the advice and consent of the senate. The magistrates may be authorized:

6 (1) To regulate all proceedings before him or her;

7 (2) To do all acts and take all measures necessary or proper for the efficient performance
8 of his or her duties;

9 (3) To require the production before him or her of books, papers, vouchers, documents,
10 and writings;

11 (4) To rule upon the admissibility of evidence;

12 (5) To issue subpoenas for the appearance of witnesses, to put witnesses on oath, to
13 examine them, and to call parties to the proceeding and examine them upon oath;

14 (6) To adjudicate a person in contempt and to order him or her imprisoned for not more
15 than seventy-two (72) hours, pending review by a justice of the court, for failure to appear in
16 response to a summons or for refusal to answer questions or produce evidence or for behavior
17 disrupting a proceeding;

18 (7) To adjudicate a party in contempt and to order him or her imprisoned for not more
19 than seventy-two (72) hours, pending review by a justice of the court, for failure to comply with a
20 pending order to provide support or to perform any other act; and

21 (8) To issue a capias and/or body attachment upon the failure of a party or witness to
22 appear after having been properly served and, should the family court not be in session, the
23 person apprehended may be detained at the adult correctional institution, if an adult, or at the
24 Rhode Island training school for youth, if a child, until the next session of the family court.

25 (d) A party aggrieved by an order entered by a magistrate shall be entitled to a review of
26 the order by a justice of the family court. Unless otherwise provided in the rules of procedure of
27 the family court, such review shall be on the record and appellate in nature. The family court shall
28 by rules of procedure establish procedures for review of orders entered by a magistrate, and for
29 enforcement of contempt adjudications of a magistrate.

30 (e) Final orders of the family court entered in a proceeding to review an order of a
31 magistrate may be appealed to the supreme court.

32 (f) The magistrates shall be empowered to hear de novo all applications for income
33 withholding pursuant to chapter 16 of title 15 and appeals of administrative agency orders of the
34 department of human services to withhold income under chapter 16 of title 15.

1 (g) The magistrates shall be empowered to hear all matters relating to the revocation or
2 nonrenewal of a license of an obligor due to non-compliance with a court order of support, in
3 accordance with chapter 11.1 of title 15.

4 (h) The magistrates may be authorized by the chief judge to hear those matters on the
5 domestic abuse prevention calendar and the nominal calendar.

6 [See § 12-1-15 of the General Laws.]

7 **8-10-3.2. General magistrate of the family court.**

8 (a) There is hereby created within the family court the position of general magistrate of
9 the family court who shall be ~~appointed~~ nominated by the ~~chief judge of the family court~~
10 governor, on the basis of merit, from a list submitted by the judicial nominating commission, with
11 the advice and consent of the senate for a term of ten (10) years and until a successor is ~~appointed~~
12 nominated and qualified. Nothing herein shall be construed to prohibit the ~~assignment~~
13 renomination of the general magistrate to more than one such term, subject to the advice and
14 consent of the senate.

15 (b) The general magistrate shall be an attorney at law and a member in good standing of
16 the Rhode Island bar.

17 (c) The primary function of the general magistrate shall be the enforcement of child
18 support decrees, orders, and law relative to child support. The general magistrate shall have all
19 the authority and powers vested in magistrates by virtue of §§ 8-10-3, 8-10-3.1, 9-15-19, 9-15-21,
20 9-14-26, 9-18-8, 9-18-9, and 36-2-3, and any other authority conferred upon magistrates by any
21 general or public law or by any rule of procedure or practice of any court within the state.

22 (d) The chief justice of the supreme court with the agreement of the chief judge of the
23 family court may specially assign the general magistrate to any court of the unified judicial
24 system; provided, however, that the general magistrate may be assigned to the superior court
25 subject to the prior approval of the presiding justice of the superior court. When the general
26 magistrate is so assigned he or she shall be vested, authorized, and empowered with all the
27 powers belonging to the magistrates of the court to which he or she is specially assigned.

28 (e) The general magistrate shall:

29 (1) Receive all credits and retirement allowances as afforded justices under chapter 3 of
30 this title and any other applicable law;

31 (2) Be governed by the commission on judicial tenure and discipline, chapter 16 of this
32 title, in the same manner as justices and workers' compensation judges;

33 (3) Be entitled to a special license plate under § 31-3-47;

34 (4) Receive a salary equivalent to that of a district court judge;

1 (5) Be subject to all the provisions of the canons of judicial ethics; and

2 (6) Be subject to all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

3 (f) The general magistrate of the family court who shall at the time of passage of this
4 section hold the position of general magistrate, shall upon retirement, at his or her own request
5 and at the direction of the chief justice of the supreme court, subject to the retiree's physical and
6 mental competence, be assigned to perform such services as general magistrate of the family
7 court, as the chief judge of the family court shall prescribe. When so assigned and performing
8 such service, the general magistrate shall have all the powers and authority of general magistrate
9 of the family court, but otherwise shall have no powers nor be authorized to perform any judicial
10 duties. For any such service or assignments performed after retirement, the general magistrate
11 shall receive no compensation whatsoever, either monetary or in kind. Such a retired general
12 magistrate shall not be counted in the number of judicial officers provided by law for the family
13 court.

14 (g) The provisions of this section shall be afforded liberal construction.

15 SECTION 5. Section 8-16.1-6 of the General Laws in Chapter 8-16.1 entitled "Judicial
16 Selection" is hereby amended to read as follows:

17 **8-16.1-6. Nomination and appointment of judges.**

18 (a) The governor shall immediately notify the commission of any vacancy or prospective
19 vacancy of a judge or magistrate of any state court other than the Rhode Island supreme court.
20 The commission shall advertise for each vacancy and solicit prospective candidates and shall
21 consider names submitted from any source. Within ninety (90) days of any vacancy, the
22 commission shall publicly submit the names of not less than three (3), and not more than five (5),
23 highly qualified persons for each vacancy to the governor. The governor shall fill any vacancy of
24 any judge of the Rhode Island superior court, family court, district court, workers' compensation
25 court, or any other state court that the general assembly may, from time to time, establish, by
26 nominating one of the three (3) to five (5) highly qualified persons forwarded to him or her by the
27 commission for the court where the vacancy occurs.

28 (b) The governor shall fill any vacancy within twenty-one (21) days of the public
29 submission by the commission.

30 (c) Each nomination shall be forwarded forthwith to the senate, and by and with the
31 advice and consent of the senate, each nominee shall be appointed by the governor to serve
32 subject to the general laws. The senate shall, after seven (7) calendar days of receipt of the
33 nomination consider the nomination, but if the senate fails within ninety (90) days after the
34 submission to confirm the nominee, or if the senate does not, by a majority vote of its members,

1 extend the deliberation an additional seven (7) calendar days, the governor shall appoint some
2 other person to fill the vacancy and shall submit his or her appointment to the senate for
3 confirmation in like manner until the senate shall confirm the nomination. If the nominee is
4 rejected by the senate, the commission shall submit a new list of three (3) to five (5) candidates to
5 the governor for the purpose of nomination in accordance with this chapter. Any new list may
6 include, but need not be limited to, the names of any candidates who were previously submitted
7 to the governor by the commission but who were not forwarded to the senate for its advice and
8 consent.

9 (d) During the time for consideration of the nominees by the senate, the senate judiciary
10 committee shall conduct an investigation and public hearing on the question of the qualifications
11 of the nominee or nominees. At the public hearing, the testimony of every witness shall be taken
12 under oath and stenographic records shall be taken and maintained. Further, the senate judiciary
13 committee shall, during the course of its investigation and hearing, have the power upon majority
14 vote of the committee members present to issue witness subpoenas, subpoenas duces tecum, and
15 orders for the production of books, accounts, papers, records, and documents that shall be signed
16 and issued by the chairperson of the committee, or the person serving in his or her capacity. All
17 such subpoenas and orders shall be served as subpoenas in civil cases in the superior court are
18 served, and witnesses so subpoenaed shall be entitled to the same fees for attendance and travel as
19 provided for witnesses in civil cases in the superior court. If the person subpoenaed to attend
20 before the committee fails to obey the command of the subpoena without reasonable cause; refuse
21 to be sworn; or to be examined; or to answer a legal and pertinent question; or if any person shall
22 refuse to produce books, accounts, papers, records, and documents material to the issue, set forth
23 in an order duly served on him or her; the committee by majority vote of the committee members
24 present may apply to any justice of the superior court, for any county, upon proof by affidavit of
25 the fact, for a rule or order returnable in not less than two (2), nor more than five (5), days,
26 directing the person to show cause before the justice who made the order or any other justice of
27 the superior court, why he or she should not be adjudged in contempt. Upon the return of the
28 order, the justice before whom the matter is brought on for hearing shall examine under oath the
29 person, and the person shall be given an opportunity to be heard, and if the justice shall determine
30 that the person has refused without reasonable cause or legal excuse to be examined, or to answer
31 a legal and pertinent question, or to produce books, accounts, papers, records, and documents
32 material to the issue that he or she was ordered to bring or produce, he or she may forthwith
33 commit the offender to the adult correctional institutions, there to remain until the person submits
34 to do the act which he or she was so required to do, or is discharged according to law.

1 (e) The committee shall, for the purpose of investigating the qualifications of the nominee
2 or nominees, be furnished with a report compiled by the state police in conjunction with the
3 attorney general's office indicating the determinations and findings of the state police and
4 attorney general's office investigations concerning the background of the nominee or nominees,
5 and the report shall include, but not be limited to, the following:

6 (1) Whether the nominee has ever been convicted of, or pleaded guilty to, a misdemeanor
7 or felony in this or any other state or foreign country;

8 (2) Whether the nominee has ever filed a personal bankruptcy petition or an assignment
9 for the benefit of creditors in this or any other state or foreign country; and whether the nominee
10 has ever been a partner in, held ten percent (10%) or more of stock in, or held office in any sole
11 proprietorship, partnership, or corporation that has been involved in bankruptcy or receivership
12 actions as a debtor or because of insolvency at the time the nominee was a partner in, held ten
13 percent (10%) or more stock in, or held office in any such sole proprietorship, partnership, or
14 corporation;

15 (3) Whether the nominee has ever had a civil judgment rendered against him or her
16 arising out of an allegation of fraud, misrepresentation, libel, slander, professional negligence, or
17 any intentional tort in this state or any other state or foreign country;

18 (4) The state police, in conjunction with the attorney general's department, shall provide
19 in their report the names and addresses of each and every source of their information.

20 (f) The reports set forth in this section shall be delivered to the chairperson and members
21 of the senate judiciary committee in addition to the nominee or nominees only prior to the
22 commencement of the public hearing. Provided, however, that if the nominee or nominees
23 withdraw or decline the appointment prior to the public hearing, then the report or reports shall be
24 returned to the chairperson of the judiciary committee and destroyed.

25 (g) The committee shall also require a financial statement to be submitted by each
26 nominee, prior to the public hearing, to the chairperson of the senate judiciary committee, to
27 investigate each nominee to determine his or her compliance with the provisions of chapter 14 of
28 title 36.

29 (h) Any associate justice of any state court who is appointed to serve as the chief or
30 presiding justice of that court on an interim basis shall retain his or her status as an associate
31 justice until the appointment to chief or presiding justice is made permanent.

32 (i) In case a vacancy shall occur when the senate is not in session, the governor shall
33 appoint some person from a list of three (3) to five (5) persons submitted to the governor by the
34 commission to fill the vacancy until the senate shall next convene, when the governor shall make

1 an appointment as provided in this section.

2 SECTION 6. This act shall take effect upon passage.

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LC004995
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE - COURTS

1 This act would vest with the governor the sole authority to nominate, on the basis of
2 merit, from a list submitted by the judicial nominating commission with the advice and consent of
3 the senate, all judges and magistrates, to all courts.

4 This act would take effect upon passage.

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