

2019 -- S 0962

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

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

Introduced By: Senator Michael J. McCaffrey

Date Introduced: June 06, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 8-2-39.3 of the General Laws in Chapter 8-2 entitled "Superior
2 Court" is hereby amended to read as follows:

3 **8-2-39.3. Superior court diversion.**

4 (a) In accordance with § 8-6-2, the superior court may create, with the approval of the
5 supreme court, rules for a superior court diversion program (the "program"). The presiding justice
6 may assign a justice or magistrate to administer the diversion program, ~~in which the defendant~~
7 ~~enters a plea to the pending matter and agrees to written contractual conditions of diversion with~~
8 ~~the justice or magistrate, including reporting to the court as instructed for reviews, until such time~~
9 ~~as the defendant has completed the diversion program to the court's satisfaction and all reviews~~
10 ~~are completed. Contractual conditions may include, but are not limited to, compliance with~~
11 ~~counseling, community service, and restitution obligations.~~ The program is designed to offer an
12 alternative to traditional conviction, sentencing, and incarceration by providing eligible
13 defendants with a framework of supervision and services in lieu of incarceration and/or probation
14 to help them make informed decisions, engage in positive behavior, and reduce the risk of
15 recidivism.

16 (b) Definitions:

17 (1) "Disqualifying offense" includes murder, manslaughter, first-degree arson,
18 kidnapping with intent to extort, robbery, felony assault-serious bodily injury, larceny from the
19 person, burglary, entering a dwelling house with intent to commit murder, robbery, sexual assault,

1 any domestic violence offense as defined in chapter 29 of title 12, felony driving while
2 intoxicated, driving while intoxicated-death resulting, driving while intoxicated-serious bodily
3 injury resulting, possession of greater than one ounce (1 oz.) or greater than one kilogram (1 kg.)
4 of a controlled substance, excluding marijuana, possession of greater than five kilograms (5 kg.)
5 of marijuana, any offense requiring sex offender registration pursuant to chapter 37.1 of title 11;
6 and child abuse as defined in § 11-9-5.3, all firearms offenses, as defined in chapter 47 of title 11,
7 with the exception of: § 11-47-5, possession of firearms by certain persons prohibited; § 11-47-6,
8 mental incompetents and drug addicts prohibited from possession of firearms; § 11-47-51, loaded
9 weapons in vehicles; § 11-47-8, license or permit required for carrying pistol-possession of
10 machine gun; § 11-47-52, carrying of weapon while under the influence of liquor or drugs; The
11 definition shall also include any attempt or conspiracy to commit any of the offenses included in
12 this subsection.

13 (2) "Eligible defendant" means any person who stands charged in a district court
14 complaint, superior court indictment or a superior court information for a felony offense and:

15 (i) Has not been previously convicted of or plead nolo contendere to a disqualifying
16 offense, as defined in this section;

17 (ii) Has not been previously convicted of or plead nolo contendere previously to two (2)
18 or more felony offenses within the last five (5) years (excluding any time during which the
19 offender was incarcerated for any reason between the time of commission of the previous felony
20 and the time of commission of the present felony);

21 (iii) Has not been charged with a disqualifying offense as defined in this section.

22 (c) The procedure for referral and admission into the program shall be as follows:

23 (1) At any time after the arraignment of an eligible defendant, either in the district court
24 or superior court, but prior to the entry of a plea of guilty or the commencement of trial, a referral
25 may be made to the judicial diversion program's sentencing case manager. The referral may be
26 made by a representative of the department of the attorney general, or counsel entered on behalf
27 of a defendant or upon request by a justice of the superior or district court.

28 (2) The judicial diversion sentencing case manager shall ensure that the individual is an
29 eligible defendant and satisfies any additional criteria established by the court through its rules
30 and regulations

31 (3) The judicial diversion sentencing case manager shall submit his or her report to the
32 justice or magistrate assigned to the program, indicating acceptance or rejection into the program.
33 Upon receipt of the report, the court shall confer with counsel for the defendant and counsel for
34 the state.

1 (4) Either party may request a hearing on the issue of whether the defendant should be
2 admitted into the program.

3 (5) The superior court magistrate or justice assigned to the program shall make the final
4 determination as to whether a defendant is admitted into the program.

5 (d) Notwithstanding the above provisions, if counsel for the department of attorney
6 general and the counsel for the defendant agree that the defendant should be admitted to the
7 program, he or she shall be deemed "eligible" and may be granted admission.

8 (e) Once the defendant has been accepted into the program, the defendant shall sign a
9 contract. The contract will detail the requirements of the program, which requirements shall be
10 consistent with the rules and regulations promulgated by the court. The defendant will be bound
11 by the terms of the contract, which will set forth the court's expectations; the conditions imposed
12 upon and the responsibilities of the defendant; and the treatment plan goals and strategies. In
13 addition, by signing the contract, the defendant agrees to waive any applicable statute of
14 limitations and/or right to a speedy trial.

15 (f) If a defendant fails to abide by the program's conditions and orders, he or she may be
16 terminated from the program by the magistrate or justice assigned to the program. If a defendant
17 is terminated from the program then he or she shall have his or her case placed on the superior
18 court criminal calendar in the county that the case originated.

19 (g) The superior court may make such rules and regulations for the administration and
20 enforcement of this chapter as it may deem necessary. Provided, further, notwithstanding any
21 provision of the general or public laws to the contrary, the superior court shall have the power to
22 adopt by rule or regulation, in whole or in part, any standards, rules, regulations, or other
23 standards and procedures governing the judicial diversion program.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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- 1 This act would allow the presiding justice of the superior court, to create a superior court
- 2 diversion program.

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