

2017 -- H 5117 SUBSTITUTE A

LC000646/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO CRIMINAL PROCEDURE -- SENTENCE AND EXECUTION

Introduced By: Representatives Blazejewski, Slater, Diaz, Craven, and Knight

Date Introduced: January 13, 2017

Referred To: House 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 and 12-19-19 of the General
2 Laws in Chapter 12-19 entitled "Sentence and Execution" are hereby amended to read as follows:

3 **12-19-8. Suspension of sentence and probation by superior or district court.**

4 (a) Application. - Except where the suspension of sentence shall otherwise be prohibited
5 by law, and subject to the purposes and limits imposed by this section and §12-19-8.1, whenever
6 any defendant shall appear for sentence before the superior or district court, the court may impose
7 a sentence and suspend the execution of the sentence, in whole or in part, or place the defendant
8 on probation without the imposition of a suspended sentence. The suspension shall place the
9 defendant on probation for the time and on any terms and conditions of probation that the court
10 may fix and pursuant to the terms and conditions set by §12-19-8.1.

11 (b) Duration. - The period of probation for a felony shall be set for a period of time as
12 required by law, or with consideration given to judicial sentencing benchmarks. ~~, where no~~
13 ~~sentence is imposed or where sentence is entirely suspended,~~ The period of probation for a
14 misdemeanor, where no sentence is imposed or where sentence is entirely suspended, may be for
15 any period up to the maximum time of sentence provided by applicable statutes. Where sentence
16 is imposed and suspended in part, the term ordered to be served and the period of probation
17 together shall not exceed the maximum time of sentence provided by applicable statutes.

18 (c) ~~At any time during the term of a sentence imposed, the probation and parole unit of~~
19 ~~the department of corrections may seek permission of the superior or district court to modify a~~

1 ~~defendant's conditions of probation set at the time of sentence by either imposing additional~~
2 ~~conditions of probation or removing previously imposed conditions of probation to provide for~~
3 ~~more effective supervision of the defendant. Failure of the defendant to comply with modified~~
4 ~~conditions of probation may result in a violation of probation being filed pursuant to § 12-19-9.~~

5 **12-19-9. Violation of terms of probation -- Notice to attorney general -- Revocation**
6 **or continuation of suspension.**

7 (a) Whenever any person who has been placed on probation pursuant to § 12-9-8 violates
8 the terms and conditions of his or her probation as fixed by the court, the police or the probation
9 authority shall inform the attorney general of the violation, and the attorney general shall cause
10 the defendant to appear before the court. The department of corrections or the court may request
11 the division of ~~field~~ rehabilitative services to render a report relative to the conduct of the
12 defendant, and, pending receipt of the report, and the information contained in any report under
13 §12-13-24.1, the court may order the defendant held without bail for a period not exceeding ten
14 (10) days, excluding Saturdays, Sundays, and holidays, unless waived by the defendant or the
15 court finds good cause to extend the period of detention pending the violation hearing.

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

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

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

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

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

28 (5) Convert a sentence of probation without incarceration to a suspended sentence or any
29 other sentence deemed just and proper by the court under the law, or

30 (6) Convert a sentence of probation to a sentence of incarceration, as the court may deem
31 just and proper.

32 (c) The court shall sentence for a violation under subsection (b) of this section and shall
33 consider, but shall not be bound by, the judicial sentencing benchmarks.

34 **12-19-14. Violation of terms of probation -- Notice to court -- Revocation or**

1 **continuation of suspension.**

2 (a) Whenever any person, who has been placed on probation by virtue of the suspension
3 of execution of his or her sentence pursuant to § 12-19-13, violates the terms and conditions of
4 his or her probation as fixed by the court, the police or department of corrections division of ~~field~~
5 rehabilitative services shall cause the defendant to appear before the court. The court may require
6 the division of ~~field~~ rehabilitative services to render a written report relative to the conduct of the
7 defendant, and, pending receipt of the report, and the information contained in any report under
8 §12-13-24.1, the division of rehabilitative services may recommend that the time served up to that
9 point is a sufficient response to a violation that is not a new alleged crime, or may make any other
10 recommendations to the court in lieu of incarceration. The court may order the defendant held
11 without bail for a period not exceeding ten (10) days excluding Saturdays, Sundays, and holidays,
12 unless waived by the defendant or the court finds good cause to extend the period of detention
13 pending the violation hearing.

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

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

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

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

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

26 (5) Convert a sentence of probation without incarceration to a suspended sentence or any
27 other sentence deemed just and proper by the court under the law, or

28 (6) Convert a sentence of probation to a sentence of incarceration, as the court may deem
29 just and proper.

30 **12-19-15. Term of probation -- Power to commit after termination of original**
31 **sentence.**

32 The power of the court to commit the defendant shall not be deemed to terminate with the
33 termination of the period of the original sentence, but the court shall have power to enforce the
34 sentence even though the original period of the sentence has expired. The term of the suspended

1 sentence may be longer or shorter or for the same time as the probation period, and the time
2 during which the defendant is on probation shall not be deemed by §§ 12-19-13 -- 12-19-17 to be
3 a part of the term of his or her sentence, although the court, in its discretion, may give
4 consideration to the probationer's conduct during the probationary period in [imposing a sanction](#)
5 [or](#) enforcing the sentence originally imposed, or any lesser sentence.

6 **12-19-19. Sentencing on plea of guilty or nolo contendere -- Deferment of sentence.**

7 (a) Whenever any person is arraigned before the superior court and pleads guilty or nolo
8 contendere, he or she may be at any time sentenced by the court; provided, that if at any time the
9 court formally defers sentencing, then the person and the attorney general shall enter into a
10 written deferral agreement to be filed with the clerk of the court. When a court formally defers
11 sentence, [such deferment of sentence shall be no less than eighteen \(18\) months nor more than](#)
12 [five \(5\) years, and](#) the court may only impose sentence within [the term of ~~five \(5\) years from and~~](#)
13 [after the date of](#) the written deferral agreement, unless during the [five \(5\) year required](#) period, the
14 person shall be declared to have violated the terms and conditions of the deferment pursuant to
15 subsection (b) in which event the court may impose sentence.

16 (b) It shall be an express condition of any deferment of sentence in accordance with this
17 section that the person agreeing to said deferment of sentence shall at all times during the period
18 of deferment keep the peace and be of good behavior. A violation of this express condition or any
19 other condition set forth by either the court or the written deferral agreement shall violate the
20 terms and conditions of the deferment of sentence and the court may [impose a sanction or](#) impose
21 sentence. The determination of whether a violation has occurred shall be made by the court in
22 accordance with procedures relating to violation of probation [in court rules and](#) §§ 12-19-2 and
23 12-19-14.

24 (c) If a person, after the completion of the ~~five-year (5)~~ deferment period is determined
25 by the court after a hearing to have complied with all of the terms and conditions of the deferral
26 agreement including, but not limited to, the payment in full of any court-ordered fines, fees, costs,
27 assessments, and restitution to victims of crime, then the person shall become immediately
28 eligible for consideration for expungement pursuant to the provisions of §§ 12-1.3-2 and 12-1.3-
29 3.

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

32 **12-19-8.1. Conditions of probation.**

33 [\(a\) The following shall constitute basic conditions of probation applicable to all](#)
34 [defendants upon whom a period of probation has been imposed:](#)

- 1 (1) Obey all laws;
2 (2) Keep the peace and be of good behavior;
3 (3) Report to the probation officer and parole officer as directed;
4 (4) Remain within the state of Rhode Island except with the prior approval, specifically
5 or as an agreed routine, of the probation and parole office;
6 (5) Notify the probation and parole officer immediately of any change of address,
7 telephone number, or employment;
8 (6) Make every effort to keep steadily employed or attend school or vocational training;
9 (7) Waive extradition from anywhere in the United States to Rhode Island, if required to
10 appear in any Rhode Island court;
11 (8) Provide a DNA sample if required by §§12-1.5-7 and 12-1.5-8;
12 (9) Pay restitution, court costs, and fines, if assessed, in one or several sums, based on the
13 defendant's ability to pay; and
14 (10) Submit to a risk and needs assessment.
15 (b) Special probation conditions related to community service, computer restrictions, no
16 contact orders, or any other conditions deemed just and reasonable may be imposed at the
17 discretion of the court.
18 (c) At any time during the term of a sentence imposed, the probation and parole unit of
19 the department of corrections may seek permission of the superior or district court to modify a
20 defendant's basic conditions or special conditions of treatment or counseling by either imposing
21 additional conditions or removing previously imposed conditions of probation to provide for
22 more effective supervision of the defendant.
23 (d) Failure of the defendant to comply with modified conditions of probation constitutes a
24 violation.

25 **12-19-40. Severability.**

26 If any provision of this chapter or its application to any person or circumstances is held
27 invalid, that invalidity shall not affect other provisions or applications of the chapter which can be
28 given effect without the invalid provision or application, and to this end the provisions of this
29 chapter are declared to be severable.

30 SECTION 3. This act shall take effect upon passage and shall be applicable to all cases
31 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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