

2011 -- H 5214

LC00246

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO CRIMINAL PROCEDURE - SENTENCE AND EXECUTION

Introduced By: Representatives Blazewski, Newberry, Slater, Williams, and Diaz

Date Introduced: February 03, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 12-19-9, 12-19-14, 12-19-15 and 12-19-19 of the General Laws in  
2 Chapter 12-19 entitled "Sentence and Execution" are hereby amended to read as follows:

3 **12-19-9. Violation of terms of probation -- Notice to attorney general -- Revocation**  
4 **or continuation of suspension.** -- Whenever any person who has been placed on probation  
5 pursuant to section 12-9-8 violates the terms and conditions of his or her probation as fixed by the  
6 court, the police or the probation authority shall inform the attorney general of the violation, and  
7 the attorney general shall cause the defendant to appear before the court. The court may request  
8 the division of field services to render a report relative to the conduct of the defendant, and,  
9 pending receipt of the report, may order the defendant held without bail for a period not  
10 exceeding ten (10) days, excluding Saturdays, Sundays, and holidays. The court shall conduct a  
11 hearing to determine whether the defendant has violated the terms and conditions of his or her  
12 probation, at which hearing the defendant shall have the opportunity to be present and to respond.  
13 Upon a determination that the defendant has violated the terms and conditions of his or her  
14 probation the court, in open court and in the presence of the defendant, may remove the  
15 suspension and order the defendant committed on the sentence previously imposed, or on a lesser  
16 sentence, or impose a sentence if one has not been previously imposed; provided, that if  
17 sentenced to a period of incarceration, the period of incarceration shall not exceed the amount of  
18 time remaining on the original sentence, or may continue the suspension of a sentence previously  
19 imposed, as to the court may seem just and proper.

1           **12-19-14. Violation of terms of probation -- Notice to court -- Revocation or**  
2 **continuation of suspension.** -- Whenever any person, who has been placed on probation by  
3 virtue of the suspension of execution of his or her sentence pursuant to section 12-19-13, violates  
4 the terms and conditions of his or her probation as fixed by the court, the police or division of  
5 field services shall cause the defendant to appear before the court. The court may require the  
6 division of field services to render a written report relative to the conduct of the defendant, and,  
7 pending receipt of the report, may order the defendant held without bail for a period not  
8 exceeding ten (10) days excluding Saturdays, Sundays, and holidays. The court shall conduct a  
9 hearing to determine whether the defendant has violated the terms and conditions of his or her  
10 probation, at which hearing the defendant shall have the opportunity to be present and to respond.  
11 Upon a determination that the defendant has violated the terms and conditions of his or her  
12 probation the court, in open court and in the presence of the defendant, may revoke the  
13 suspension and order the defendant committed on the sentence previously imposed; provided,  
14 that if sentenced to a period of incarceration, the period of incarceration shall not exceed the  
15 amount of time remaining on the original sentence, or on a lesser sentence, or may continue the  
16 suspension as to the court may seem just and proper.

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

28           **12-19-19. Sentencing on plea of guilty or nolo contendere -- Deferment of sentence. -**  
29 **z** (a) Whenever any person is arraigned before the superior court and pleads guilty or nolo  
30 contendere, he or she may be at any time sentenced by the court; provided, that if at any time the  
31 court formally defers sentencing then the person and the attorney general shall enter into a written  
32 deferral agreement to be filed with the clerk of the court. When a court formally defers sentence,  
33 the court may only impose sentence within five (5) years from and after the date of the written  
34 deferral agreement, unless during the five (5) year period, the person shall be declared to have

1 violated the terms and conditions of the deferment pursuant to subsection (b) of this section in  
2 which event the court may impose sentence-; provided that a defendant on a deferred sentence  
3 who is sentenced to a period of incarceration for violating the terms of that deferred sentence,  
4 shall not be incarcerated for a term exceeding the amount of time remaining on the original  
5 deferred sentence.

6 (b) It shall be an express condition of any deferment of sentence in accordance with this  
7 section that the person agreeing to said deferment of sentence shall at all times during the period  
8 of deferment keep the peace and be of good behavior. A violation of this express condition or any  
9 other condition set forth by either the court or the written deferral agreement shall violate the  
10 terms and conditions of the deferment of sentence and the court may impose sentence. The  
11 determination of whether a violation has occurred shall be made by the court in accordance with  
12 procedures relating to violation of probation sections 12-19-2 and 12-19-14.

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

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

=====  
LC00246  
=====

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

\*\*\*

- 1           This act would change the sentencing laws regarding sentencing violators of deferred
- 2 probation and suspended sentences, limiting the amount of time a defendant may be sentenced to
- 3 jail on a violation of their sentence, to the time remaining on their original sentence, or less.
- 4           This act would take effect upon passage.

=====  
LC00246  
=====