

2016 -- S 2933 SUBSTITUTE A

LC005565/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

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

Introduced By: Senators McCaffrey, Lynch Prata, Jabour, Coyne, and Metts

Date Introduced: May 03, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 8-2 of the General Laws entitled "Superior Court" is hereby
2 amended by adding thereto the following section:

3 **8-2-39.3. Superior court diversion.** – In accordance with §8-6-2, the superior court may
4 create, with the approval of the supreme court, rules for a superior court diversion program. The
5 presiding justice may assign a justice or magistrate to administer the diversion program, in which
6 the defendant enters a plea to the pending matter and agrees to written contractual conditions of
7 diversion with the justice or magistrate, including reporting to the court as instructed for reviews,
8 for a defined period of time. Contractual conditions may include, but are not limited to,
9 compliance with counseling, community service, and restitution obligations.

10 SECTION 2. Section 12-7-12 of the General Laws in Chapter 12-7 entitled "Arrest" is
11 hereby amended to read as follows:

12 **12-7-12. Release of arrested person by officer in charge of police station** **Release of**
13 **arrested person by officer.** -- (a) The officer in charge of any police station ~~may~~ shall consider
14 the release of any person in his or her station who has been arrested without a warrant:

15 (1) Without requiring the person to appear in court, when the officer is satisfied that
16 there is no ground for making criminal complaint against the person or when the person has been
17 arrested for drunkenness but in the judgment of the officer need not be brought before a
18 magistrate; or

1 (2) If the arrest is for a misdemeanor, upon that person signing an agreement to appear in
2 court at a designated time.

3 (b) Any officer with custody of a person who has been arrested or detained without a
4 warrant may recognize that the person suffers from a serious mental illness and may release and
5 refer the person to the nearest appropriate inpatient mental health facility or outpatient treatment
6 program.

7 SECTION 3. Section 12-10-12 of the General Laws in Chapter 12-10 entitled
8 "Preliminary Proceedings in District Courts" is hereby amended to read as follows:

9 **12-10-12. Filing of complaints.** -- (a) Subject to any other provisions of law relative to
10 the filing of complaints for particular crimes, any judge of the district court or superior court may
11 place on file any complaint in a criminal case other than a complaint for the commission of a
12 felony or a complaint against a person who has been convicted of a felony or a private complaint.
13 The court may in its discretion require, as a condition of the filing, the performance of services
14 for the public good or may attach any other conditions to it that the court shall determine;
15 provided, in cases where the court has ordered restitution ~~totals less than two hundred dollars~~
16 ~~(\$200) to an injured party pursuant to this section or § 12-19-34~~, the court shall require that full
17 restitution be made at the time of sentencing if the court determines that the defendant has the
18 present ability to make ~~the~~ full restitution.

19 (b) Express conditions of any filing in accordance with this section that the defendant
20 shall at all times during the one year keep the peace and be of good behavior and shall have paid
21 all outstanding court-imposed or court-related fees, fines, costs, assessments, charges, and/or any
22 other monetary obligations unless reduced or waived by order of the court. A violation of ~~these~~
23 ~~express conditions, or~~ any ~~other~~ condition set by the court; ~~shall~~ may be deemed a violation of the
24 filing and the matter that was filed may be resurrected by the court, or the court may impose a
25 sanction. A determination of whether a violation has occurred shall be made by the court in
26 accordance with the procedures relating to a violation of probation, ~~§§ §12-19-9 and 12-19-14~~.

27 (c) In the event the complaint was originally filed under this section subsequent to the
28 defendant's plea of guilty or nolo contendere to the charges, the court, if it finds there to have
29 been a violation but does not impose a sanction, may sentence the defendant. In the event the
30 court filed the complaint under this section while the defendant maintained a plea of not guilty, if
31 the court finds there to have been a violation but does not impose a sanction, it may proceed to
32 the further disposition of the complaint according to law. If no action is taken on the complaint
33 for a period of one year following the filing, the complaint shall be automatically expunged. No
34 criminal record shall result; provided, that in any civil action for a tort, a plea of guilty or a

1 finding of guilty should be admissible notwithstanding the fact that the complaint has been filed.

2 (d) Notwithstanding the foregoing provisions of this section, in the event a complaint for
3 a crime involving domestic violence was originally filed under this section subsequent to the
4 defendant's plea of guilty or nolo contendere to the charges, the court, if it finds there to have
5 been a violation, may sentence the defendant. In the event the court filed the complaint for a
6 crime involving domestic violence under this section while the defendant maintained a plea of not
7 guilty, if the court finds there to have been a violation, it may proceed to the further disposition of
8 the complaint for a crime involving domestic violence according to law. If, for a period of one
9 year after the date of filing, the defendant is not charged with a violation pursuant to subsection
10 (b) of this section, the filed complaint for the crime involving domestic violence shall be
11 automatically quashed and shall not be resurrected. If, for a period of three (3) years after the date
12 of filing, the defendant is not charged with a crime involving domestic violence, or if so charged,
13 is acquitted or the complaint is dismissed, all records relating to the filed complaint for a crime
14 involving domestic violence shall be expunged without the requirement of filing a motion
15 pursuant to chapter 1.3 of title 12. No criminal records shall result, unless in any civil action for a
16 tort, in which a plea of guilty or a finding of guilty is admissible notwithstanding the fact that the
17 complaint has been filed. Provided, however, that in sentencing a defendant for a crime involving
18 domestic violence of which the defendant was charged within three (3) years after the filing of a
19 prior crime involving domestic violence to which the defendant pleaded guilty or nolo
20 contendere, the court may take the plea into consideration.

21 (e) The defendant shall be advised that any and all bail money relating to a case that
22 remains on deposit and is not claimed at the time of expungement shall be escheated to the state's
23 general treasury in accordance with chapter 12 of title 8.

24 SECTION 4. Sections 12-13-24 and 12-13-24.1 of the General Laws in Chapter 12-13
25 entitled "Bail and Recognizance" are hereby amended to read as follows:

26 **12-13-24. Confidentiality of pretrial services program records.** -- (a) Information
27 supplied by a defendant to a representative of the pretrial services program during the defendant's
28 initial interview or subsequent contacts, or information obtained by the pretrial services program
29 as a result of the interview or subsequent contacts, shall be deemed confidential and shall not be
30 subject to subpoena or to disclosure without the written consent of the defendant except in the
31 following circumstances:

32 (1) Information relevant to the imposition of conditions of release shall be presented to
33 the court on a standardized form when the court is considering what conditions of release to
34 impose;

1 (2) Information furnished by the defendant to the pretrial services program and recorded
2 on a completed interview form shall be furnished to law enforcement officials upon request only
3 if the defendant fails to appear in court when required, after notice to the defendant or the
4 defendant's attorney of record;

5 (3) Information concerning compliance with any conditions of release imposed by the
6 court shall be furnished to the court upon its request for consideration or modification of
7 conditions of release or of sentencing or of probation;

8 (4) Information relevant to sentencing or probation shall be furnished to the court upon
9 its request for consideration in imposing sentence or probation;

10 (5) At its discretion, the court may permit the probation officer, for the purpose of
11 preparing the presentence investigation report, and the defense attorney to inspect the completed
12 interview form; ~~and~~

13 (6) In felony cases, completed pre-arraignment reports shall be provided to the superior
14 court; and

15 ~~(6)~~(7) Any person conducting an evaluation of the pretrial release program may have
16 access to all completed interview forms upon order from the supreme court.

17 (b) At the beginning of the defendant's initial interview with a representative of the
18 pretrial services program, the defendant shall be advised of the above uses of information
19 supplied by him or her or obtained as a result of information supplied by him or her.

20 **12-13-24.1. Pre-trial services unit.** -- (a) Creation of unit; definitions. - There is created
21 within the district court a pre-trial services unit to provide pre-arraignment and post-arraignment
22 services to defendants. ~~These services shall include, but not be limited to: bail information and~~
23 ~~screening;~~

24 (1) "Pre-arraignment report" may include:

25 (i) The results of a risk screen;

26 (ii) For a defendant who scores as high risk on the risk screen, additional validated
27 screens for mental health and substance use needs, to determine whether more in-depth
28 assessment is needed post-arraignment; and

29 (iii) For a defendant charged with a domestic violence offense under §12-29-2, and who
30 has prior domestic violence offenses or other indications of risk, a lethality or dangerousness
31 assessment.

32 (2) "Post-arraignment service" includes completion of the pre-arraignment report, a post-
33 arraignment report, if necessary, and monitoring of defendants released on conditions that are
34 informed by the pre-arraignment report, bail including substance abuse treatment referrals and

1 testing, referrals to the home confinement program, employment referrals, and any other referrals
2 that may be necessary to carry out the intent of this section.

3 (3) "Risk screen" means a validated, empirically-based pretrial risk tool composed of a
4 brief set of questions that may be answered without interviewing the defendant and are designed
5 to predict failure to appear and risk to re-offend.

6 (b) ~~Bail evaluation~~ Pre-arraignment report. - Whenever any person shall be taken into
7 custody by any peace officer for the purpose of bringing that person before a court for
8 arraignment or any other proceeding which may result in that person being detained pending a
9 final adjudication of the charge, if the person is charged with a felony, or a misdemeanor
10 domestic violence offense under §12-29-2 and has prior domestic violence offenses or other
11 indications of risk, the pretrial services unit shall, time permitting, prepare, ~~a judicial officer may~~
12 ~~cause to be conducted~~ a pre-arraignment report and any ~~or~~ post-arraignment screening of the
13 accused deemed necessary by the court or the pretrial services unit, and shall obtain ~~any~~ relevant
14 information, records and documents that may be useful to the judicial officer in determining the
15 form and type of recognizance and conditions placed on the defendant.

16 (c) Delivery of report. - The pre-arraignment report ~~of the pre-arraignment or~~ and any
17 post-arraignment screening shall be immediately delivered to the judicial officer before whom the
18 accused shall be brought for the purpose of determining the form and conditions of recognizance
19 ~~and shall contain the information set forth in subsection (d) of this section.~~

20 (d) ~~Form of report.—The report of the pre-arraignment or post-arraignment screening~~
21 ~~shall contain the following information regarding the accused:~~

- 22 (1) ~~Name and address;~~
- 23 (2) ~~Date of birth;~~
- 24 (3) ~~Marital status;~~
- 25 (4) ~~Names and addresses of dependents;~~
- 26 (5) ~~Social security number;~~
- 27 (6) ~~Present employment including place of employment, position held and length of~~
28 ~~employment;~~
- 29 (7) ~~Whether or not the accused is under the care of a licensed physician or on any~~
30 ~~medication prescribed by a licensed physician;~~
- 31 (8) ~~Education;~~
- 32 (9) ~~Prior criminal record;~~
- 33 (10) ~~Prior court appearances;~~
- 34 (11) ~~Ties to the community; and~~

1 (12) ~~Any other information that may be required to make a determination on the amount~~
2 ~~and conditions of recognizance or bail.~~

3 (e) Confidentiality of communications. - The accused shall be advised orally and in a
4 written waiver form for the signature of the accused, that he or she has the right to remain silent
5 and may voluntarily decline to respond to any or all questions that may be put by representatives
6 of the pre-trial services unit. Communications between the accused and representatives of the pre-
7 trial services unit shall be considered confidential pursuant to § 12-13-24.

8 SECTION 5. Section 1 of this act shall take effect upon issuance of applicable rules by
9 the supreme court. Section 4 of this act shall take effect on January 1, 2017. The remaining
10 sections of this act shall take effect upon passage and shall be applicable to all cases pending as of
11 the effective date.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO COURTS AND CIVIL PROCEDURE--COURTS--SUPERIOR COURT
DIVERSION

1 This act would allow the presiding justice of the superior court, with the approval of the
2 supreme court, to create a superior court diversion program. The program would allow the court
3 to administer rules whereby defendants would participate in substance abuse screening,
4 community service, counseling and any other reasonable conditions. It would also require
5 restitution be paid in full, if the defendant has the ability to pay, upon filing a complaint pursuant
6 to §12-10-12. This act would further require an officer in charge to consider releasing a person
7 who has been arrested for a misdemeanor conditioned on a summons to appear and would permit
8 an officer to release a suspect with serious mental health issues and refer them to the nearest
9 inpatient or outpatient facility. This act would also alter the pretrial services unit by requiring risk
10 assessments and require additional risk screens for those with a high risk of re-offending or those
11 with past crimes of domestic violence.

12 Section 1 of this act would take effect upon issuance of applicable rules by the supreme
13 court. Section 4 of this act would take effect on January 1, 2017. The remaining sections of this
14 act would take effect upon passage and would be applicable to all cases pending as of the
15 effective date.

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