

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT – CORRECTIONS DEPARTMENT

Introduced By: Senators LaMountain, Burke, McKenney, Acosta, Mack, and Euer

Date Introduced: March 07, 2023

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-56-20.2 of the General Laws in Chapter 42-56 entitled  
2 "Corrections Department" is hereby amended to read as follows:

3 **42-56-20.2. Community confinement.**

4 (a) **Persons subject to this section.** Every person who shall have been adjudged guilty of  
5 any crime after trial before a judge, a judge and jury, or before a single judge entertaining the  
6 person's plea of nolo contendere or guilty to an offense ("adjudged person"), and every person  
7 sentenced to imprisonment in the adult correctional institutions ("sentenced person") including  
8 those sentenced or imprisoned for civil contempt, and every person awaiting trial at the adult  
9 correctional institutions ("detained person") who meets the criteria set forth in this section shall be  
10 subject to the terms of this section except:

11 (1) Any person who is unable to demonstrate that a permanent place of residence ("eligible  
12 residence") within this state is available to that person; or

13 (2) Any person who is unable to demonstrate that he or she will be regularly employed, or  
14 enrolled in an educational or vocational training program within this state, and within thirty (30)  
15 days following the institution of community confinement; or

16 (3)(i) Any adjudged person or sentenced person or detained person who has been  
17 convicted, within the five (5) years next preceding the date of the offense for which he or she is  
18 currently so adjudged or sentenced or detained, of a violent felony.

19 A "violent felony" as used in this section shall mean any one of the following crimes or an

1 attempt to commit that crime: murder; manslaughter; sexual assault; mayhem; robbery; burglary;  
2 assault with a dangerous weapon; assault or battery involving serious bodily injury; arson; breaking  
3 and entering into a dwelling; child molestation; kidnapping; DWI resulting in death or serious  
4 injury; or driving to endanger resulting in death or serious injury; or

5 (ii) Any person currently adjudged guilty of or sentenced for or detained on any capital  
6 felony; or

7 (iii) Any person currently adjudged guilty of or sentenced for or detained on a felony  
8 offense involving the use of force or violence against a person or persons. These shall include, but  
9 are not limited to, those offenses listed in subsection (a)(3)(i) of this section; or

10 (iv) Any person currently adjudged guilty, sentenced, or detained for the sale, delivery, or  
11 possession with intent to deliver a controlled substance in violation of § 21-28-4.01(a)(4)(i) or  
12 possession of a certain enumerated quantity of a controlled substance in violation of § 21-28-4.01.1  
13 or § 21-28-4.01.2; ~~or.~~

14 ~~(v) Any person currently adjudged guilty of, or sentenced for, or detained on an offense~~  
15 ~~involving the illegal possession of a firearm.~~

16 (b) **Findings prior to sentencing to community confinement.** In the case of adjudged  
17 persons, if the judge intends to impose a sentence of community confinement, he or she shall first  
18 make specific findings, based on evidence regarding the nature and circumstances of the offense  
19 and the personal history, character, record, and propensities of the defendant that are relevant to the  
20 sentencing determination, and these findings shall be placed on the record at the time of sentencing.  
21 These findings shall include, but are not limited to:

22 (1) A finding that the person does not demonstrate a pattern of behavior indicating a  
23 propensity for violent behavior;

24 (2) A finding that the person meets each of the eligibility criteria set forth in subsection (a)  
25 of this section;

26 (3) A finding that simple probation is not an appropriate sentence;

27 (4) A finding that the interest of justice requires, for specific reasons, a sentence of non-  
28 institutional confinement; and

29 (5) A finding that the person will not pose a risk to public safety if placed in community  
30 confinement.

31 The facts supporting these findings shall be placed on the record and shall be subject to  
32 review on appeal.

33 (c) **Community confinement.**

34 (1) There shall be established within the department of corrections, a community

1 confinement program to serve that number of adjudged persons, sentenced persons, and detainees,  
2 that the director of the department of corrections (“director”) shall determine on or before July 1 of  
3 each year. Immediately upon that determination, the director shall notify the presiding justice of  
4 the superior court of the number of adjudged persons, sentenced persons, and detainees that can be  
5 accommodated in the community confinement program for the succeeding twelve (12) months.  
6 One-half (½) of all persons sentenced to community confinement shall be adjudged persons, and  
7 the balance shall be detainees and sentenced persons. The director shall provide to the presiding  
8 justice of the superior court and the family court on the first day of each month a report to set forth  
9 the number of adjudged persons, sentenced persons, and detainees participating in the community  
10 confinement program as of each reporting date. Notwithstanding any other provision of this section,  
11 if on April 1 of any fiscal year less than one-half (½) of all persons sentenced to community  
12 confinement shall be adjudged persons, then those available positions in the community  
13 confinement program may be filled by sentenced persons or detainees in accordance with the  
14 procedures set forth in subsection (c)(2) of this section.

15 (2) In the case of inmates other than those classified to community confinement under  
16 subsection (h) of this section, the director may make written application (“application”) to the  
17 sentencing judge for an order (“order”) directing that a sentenced person or detainee be confined  
18 within an eligible residence for a period of time, which in the case of a sentenced person, shall not  
19 exceed the term of imprisonment. This application and order shall contain a recommendation for a  
20 program of supervision and shall contain the findings set forth in subsections (b)(1), (b)(2), (b)(3),  
21 (b)(4), and (b)(5) of this section and facts supporting these findings. The application and order may  
22 contain a recommendation for the use of electronic surveillance or monitoring devices. The hearing  
23 on this application shall be held within ten (10) business days following the filing of this  
24 application. If the sentencing judge is unavailable to hear and consider the application the presiding  
25 justice of the superior court shall designate another judge to do so.

26 (3) In lieu of any sentence that may be otherwise imposed upon any person subject to this  
27 section, the sentencing judge may cause an adjudged person to be confined within an eligible  
28 residence for a period of time not to exceed the term of imprisonment otherwise authorized by the  
29 statute the adjudged person has been adjudged guilty of violating.

30 (4) With authorization by the sentencing judge, or, in the case of sentenced persons  
31 classified to community confinement under subsection (h) of this section by the director of  
32 corrections, or in accordance with the order, persons confined under the provisions of this chapter  
33 may be permitted to exit the eligible residence in order to travel directly to and from their place of  
34 employment or education or training and may be confined in other terms or conditions consistent

1 with the basic needs of that person that justice may demand, including the right to exit the eligible  
2 residence to which that person is confined for certain enumerated purposes such as religious  
3 observation, medical and dental treatment, participation in an education or vocational training  
4 program, and counseling, all as set forth in the order.

5 (d) **Administration.**

6 (1) **Community confinement.** The supervision of persons confined under the provisions  
7 of this chapter shall be conducted by the director, or his or her designee.

8 (2) **Intense surveillance.** The application and order shall prescribe a program of intense  
9 surveillance and supervision by the department of corrections. Persons confined under the  
10 provisions of this section shall be subject to searches of their persons or of their property when  
11 deemed necessary by the director, or his or her designee, in order to ensure the safety of the  
12 community, supervisory personnel, the safety and welfare of that person, and/or to ensure  
13 compliance with the terms of that person's program of community confinement; provided,  
14 however, that no surveillance, monitoring or search shall be done at manifestly unreasonable times  
15 or places nor in a manner or by means that would be manifestly unreasonable under the  
16 circumstances then present.

17 (3) The use of any electronic surveillance or monitoring device which is affixed to the body  
18 of the person subject to supervision is expressly prohibited unless set forth in the application and  
19 order or, in the case of sentenced persons classified to community confinement under subsection  
20 (h), otherwise authorized by the director of corrections.

21 (4) **Regulatory authority.** The director shall have full power and authority to enforce any  
22 of the provisions of this section by regulation, subject to the provisions of the Administrative  
23 Procedures Act, chapter 35 of this title. Notwithstanding any provision to the contrary, the  
24 department of corrections may contract with private agencies to carry out the provisions of this  
25 section. The civil liability of those agencies and their employees, acting within the scope of their  
26 employment, and carrying out the provisions of this section, shall be limited in the same manner  
27 and dollar amount as if they were agencies or employees of the state.

28 (e) **Violations.** Any person confined pursuant to the provisions of this section, who is found  
29 to be a violator of any of the terms and conditions imposed upon him or her according to the order,  
30 or in the case of sentenced persons classified to community confinement under subsection (h),  
31 otherwise authorized by the director of corrections, this section, or any rules, regulations, or  
32 restrictions issued pursuant hereto shall serve the balance of his or her sentence in a classification  
33 deemed appropriate by the director. If that conduct constitutes a violation of § 11-25-2, the person,  
34 upon conviction, shall be subject to an additional term of imprisonment of not less than one year

1 and not more than twenty (20) years. However, it shall be a defense to any alleged violation that  
2 the person was at the time of the violation acting out of a necessary response to an emergency  
3 situation. An “emergency situation” shall be construed to mean the avoidance by the defendant of  
4 death or of substantial personal injury, as defined above, to him or herself or to others.

5 (f) **Costs.** Each person confined according to this section shall reimburse the state for the  
6 costs or a reasonable portion thereof incurred by the state relating to the community confinement  
7 of those persons. Costs shall be initially imposed by the sentencing judge or in the order and shall  
8 be assessed by the director prior to the expiration of that person’s sentence. Once assessed, those  
9 costs shall become a lawful debt due and owing to the state by that person. Monies received under  
10 this section shall be deposited as general funds.

11 (g) **Severability.** Every word, phrase, clause, section, subsection, and any of the provisions  
12 of this section are hereby declared to be severable from the whole, and a declaration of  
13 unenforceability or unconstitutionality of any portion of this section, by a judicial court of  
14 competent jurisdiction, shall not affect the portions remaining.

15 (h) **Sentenced persons approaching release.** Notwithstanding the provisions set forth  
16 within this section, any sentenced person committed under the direct care, custody, and control of  
17 the adult correctional institutions, who is within one (1) year of the projected good time release  
18 date, provided that the person shall have completed at least one-half (½) of the full term of  
19 incarceration, or any person who is sentenced to a term of six (6) months or less of incarceration,  
20 provided that the person shall have completed at least one-half (½) of the term of incarceration,  
21 may in the discretion of the director of corrections be classified to community confinement. This  
22 provision shall not apply to any person whose current sentence was imposed upon conviction of  
23 murder, first degree sexual assault or first degree child molestation.

24 (i) **Notification to police departments.** The director, or his or her designee, shall notify  
25 the appropriate police department when a sentenced, adjudged or detained person has been placed  
26 into community confinement within that department’s jurisdiction. That notice will include the  
27 nature of the offense and the express terms and conditions of that person’s confinement. That notice  
28 shall also be given to the appropriate police department when a person in community confinement  
29 within that department’s jurisdiction is placed in escape status.

30 (j) **No incarceration credit for persons awaiting trial.** No detainee shall be given  
31 incarceration credit by the director for time spent in community confinement while awaiting trial.

32 (k) **No confinement in college or university housing facilities.** Notwithstanding any  
33 provision of the general laws to the contrary, no person eligible for community confinement shall  
34 be placed in any college or university housing facility, including, but not limited to, dormitories,

1 fraternities or sororities. College or university housing facilities shall not be considered an “eligible  
2 residence” for “community confinement.”

3 (l) A sentencing judge shall have authority to waive overnight stay or incarceration at the  
4 adult correctional institution after the sentencing of community confinement. The waiver shall be  
5 binding upon the adult correctional institution and the staff thereof, including, but not limited to  
6 the community confinement program.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO STATE AFFAIRS AND GOVERNMENT – CORRECTIONS DEPARTMENT

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- 1           This act would make those individuals who are convicted of carrying a firearm illegally
- 2 eligible for community confinement in the discretion of the court.
- 3           This act would take effect upon passage.

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