

2016 -- S 2933

=====
LC005565
=====

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. Upon successful
10 completion of the required time period, the person shall be exonerated of the charges for which
11 the sentence was deferred and records relating to the criminal complaint, information or
12 indictment shall be sealed pursuant to the provisions of §12-1-12. Further, if any record of the
13 criminal complaint, information or indictment has been entered into a docket or alphabetical
14 index, whether in writing or electronic information storage or other data compilation system, all
15 references to the identity of the person charged by the complaint shall be sealed.

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

18 ~~**12-7-12. Release of arrested person by officer in charge of police station**~~ **Release of**

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

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

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

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

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

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

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

33 (c) In the event the complaint was originally filed under this section subsequent to the
34 defendant's plea of guilty or nolo contendere to the charges, the court, if it finds there to have

1 been a violation [but does not impose a sanction](#), may sentence the defendant. In the event the
2 court filed the complaint under this section while the defendant maintained a plea of not guilty, if
3 the court finds there to have been a violation [but does not impose a sanction](#), it may proceed to
4 the further disposition of the complaint according to law. If no action is taken on the complaint
5 for a period of one year following the filing, the complaint shall be automatically expunged. No
6 criminal record shall result; provided, that in any civil action for a tort, a plea of guilty or a
7 finding of guilty should be admissible notwithstanding the fact that the complaint has been filed.

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

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

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

32 **12-13-24. Confidentiality of pretrial services program records.** -- (a) Information
33 supplied by a defendant to a representative of the pretrial services program during the defendant's
34 initial interview or subsequent contacts, or information obtained by the pretrial services program

1 as a result of the interview or subsequent contacts, shall be deemed confidential and shall not be
2 subject to subpoena or to disclosure without the written consent of the defendant except in the
3 following circumstances:

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

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

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

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

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

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

21 ~~(6)~~(7) Any person conducting an evaluation of the pretrial release program may have
22 access to all completed interview forms upon order from the supreme court.

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

26 **12-13-24.1. Pre-trial services unit.** -- (a) Creation of unit; definitions. - There is created
27 within the district court a pre-trial services unit to provide pre-arraignment and post-arraignment
28 services to defendants. ~~These services shall include, but not be limited to: bail information and~~
29 ~~screening;~~

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

31 (i) The results of a risk screen;

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

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

4 (2) "Post-arraignment service" includes completion of the pre-arraignment report, a post-
5 arraignment report, if necessary, and monitoring of defendants released on conditions that are
6 informed by the pre-arraignment report, bail including substance abuse treatment referrals and
7 testing, referrals to the home confinement program, employment referrals, and any other referrals
8 that may be necessary to carry out the intent of this section.

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

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

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

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

- 28 (1) ~~Name and address;~~
- 29 (2) ~~Date of birth;~~
- 30 (3) ~~Marital status;~~
- 31 (4) ~~Names and addresses of dependents;~~
- 32 (5) ~~Social security number;~~
- 33 (6) ~~Present employment including place of employment, position held and length of~~
34 ~~employment;~~

- 1 (7) ~~Whether or not the accused is under the care of a licensed physician or on any~~
2 ~~medication prescribed by a licensed physician;~~
3 (8) ~~Education;~~
4 (9) ~~Prior criminal record;~~
5 (10) ~~Prior court appearances;~~
6 (11) ~~Ties to the community; and~~
7 (12) ~~Any other information that may be required to make a determination on the amount~~
8 ~~and conditions of recognizance or bail.~~

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

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

=====
LC005565
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
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, and upon the completion of
5 which, charge(s) would be dismissed and the records and indices of arrest expunged. It would
6 also require restitution be paid in full, if the defendant has the ability to pay, upon filing a
7 complaint pursuant to §12-10-12. This act would further require an officer in charge to consider
8 releasing a person who has been arrested for a misdemeanor conditioned on a summons to appear
9 and would permit an officer to release a suspect with serious mental health issues and refer them
10 to the nearest inpatient or outpatient facility. This act would also alter the pretrial services unit by
11 requiring risk assessments and require additional risk screens for those with a high risk of re-
12 offending or those with past crimes of domestic violence.

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

=====
LC005565
=====