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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Representatives Barros, Tobon, Mendez, and Blazejewski

Date Introduced: February 25, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 19.4

4 THE SENTENCING REDUCTION ACT

5 **12-19.4-1. Policy.**

6 The general assembly finds and declares that sentence reductions for various defendant's
7 -serving lengthy terms of imprisonment is appropriate and hereby enacts this chapter in
8 furtherance of that finding.

9 **12-19.4-2. Sentencing factors to be considered.**

10 The court, in determining whether to impose a term of imprisonment, and, if a term of
11 imprisonment is to be imposed, in determining the length of the term, shall consider:

12 (1) The seriousness of the offense, the history and characteristics of the defendant, the
13 need for rehabilitation, substance abuse treatment, mental health treatment, the need for
14 educational or vocational training, the defendant's prior criminal history, to the extent that said
15 factors are applicable, recognizing that imprisonment is not an appropriate means of promoting
16 correction and rehabilitation.

17 (2) Notwithstanding the fact that a sentence of imprisonment can subsequently be
18 modified pursuant to the provisions of this chapter or corrected pursuant to the provisions of rule
19 35 of the rules of criminal procedure, a judgment of conviction that includes such a sentence

1 constitutes a final judgment for all other purposes.

2 **12-19.4-3. Modification of an imposed term of imprisonment.**

3 (a) The court may modify a term of imprisonment, upon motion of the director of the
4 department of corrections ("the department") or upon motion of the defendant after the defendant
5 has fully exhausted all administrative rights to appeal a failure of the department to bring a
6 motion on the defendant's behalf if it finds that:

7 (1) Extraordinary and compelling reasons warrant such a reduction; or

8 (2) The defendant is at least seventy (70) years of age, has served at least thirty (30) years
9 in prison, on the sentence impose for the offense or offenses for which the defendant is currently
10 imprisoned, and a determination has been made by the director that the defendant is not a danger
11 to the safety of any other person or the community.

12 (b) The court may modify an imposed term of imprisonment to the extent otherwise
13 expressly permitted by statute or by rule 35 of the rules of criminal procedure; and

14 (c) In the case of a defendant who has been sentenced to a term of imprisonment of the
15 department based on a sentencing provision that has subsequently been lowered, the court may
16 reduce the term of imprisonment, after considering the factors set forth in this section to the
17 extent that they are applicable.

18 **12-19.4-4. Notification requirements - Modification based on terminal illness.**

19 (a) Terminal illness shall mean a disease or condition with an end-of-life trajectory.

20 (b) Notification. The department shall, subject to any applicable confidentiality
21 requirements in the case of a defendant diagnosed with a terminal illness:

22 (1) Not later than seventy-two (72) hours after the diagnosis, notify the defendant's
23 attorney, family members or health care designee of the defendant's condition in order to allow
24 them to prepare a sentence reduction on the defendant's behalf;

25 (2) Not later than seven (7) days after the date of the diagnosis, provide the defendant's
26 attorney, family members or health care designee an opportunity to visit the defendant in person,
27 regardless of whether the defendant is being housed in a prisons facility or hospital;

28 (3) Upon request from the defendant, their attorney, family member or health care
29 designee, ensure that the department personnel assist the defendant in the preparation, drafting
30 and submission of a motion for sentence reduction;

31 (4) Not later than fourteen (14) days of receipt of a request for a sentence reduction
32 submitted on the defendant's behalf, process said request;

33 (5) Ensure that all department facilities regularly and visibly post, including in prisoner
34 handbooks, staff training manuals and materials, facility law libraries and medical and hospice

1 facilities, and make available to prisoners upon demand, notice of:

2 (i) A defendant's ability to request a sentence reduction pursuant to this section;

3 (ii) The procedures and timelines for initiation and resolving requests for sentence
4 reductions; and

5 (iii) The right to appeal a denial of a request after all administrative rights to appeal
6 within the department have been exhausted.

7 **12-19.4-5. Release of a prisoner.**

8 (a) A prisoner shall be released by the department on the date of the expiration of the
9 prisoner's term of imprisonment, less any time credited toward the service of the prisoner's
10 sentence as provided in subsection (b) of this section. If the date for a prisoner's release falls on a
11 Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released
12 by the department on the last preceding weekday.

13 (b) A prisoner who is serving a term of imprisonment of more than one year, other than a
14 term of imprisonment for the duration of the prisoner's life, may receive credit toward the service
15 of the prisoner's sentence, beyond the time served, of up to one-hundred twenty (120) days at the
16 end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of
17 the term, subject to determination by the department that, during that year, the prisoner has
18 displayed exemplary compliance with institutional disciplinary regulations. If the department
19 determines that, during that year, the prisoner has not satisfactorily complied with such
20 institutional regulations, the prisoner shall receive no such credit toward service of the prisoner's
21 sentence or shall receive such lesser credit as the department determines to be appropriate. In
22 awarding credit under this section, the department shall consider whether the prisoner, during the
23 relevant period, has earned, or is making satisfactory progress toward earning, a high school or
24 college diploma or an equivalent degree.

25 (c) The department shall ensure that it has in effect an optional General Educational
26 Development (GED) program for inmates who have not earned a high school diploma or its
27 equivalent.

28 (d) The department shall, to the extent practicable, ensure that a prisoner serving a term
29 of imprisonment spends a portion of the final months of that term (not to exceed twelve (12)
30 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and
31 prepare for the reentry of that prisoner into the community. Such conditions may include a
32 community correctional facility or home confinement.

33 (e) The authority under this chapter may be used to place a prisoner in home confinement
34 for a term of ten (10%) percent of the remaining term of imprisonment of that prisoner or six (6)

1 months, whichever is longer. The department shall, to the extent practicable, place prisoners with
2 lower risk levels and lower needs on home confinement for the maximum amount of time
3 permitted under this subsection.

4 (f) The division of parole and probation shall, to the extent practicable, offer assistance to
5 a prisoner during prerelease custody under this subsection.

6 (g) The department shall issue regulations pursuant to this section not later than ninety
7 (90) days after the date of the enactment of this sentencing reduction act, which shall ensure that
8 placement in a community correctional facility or home confinement is:

9 (1) Conducted in a manner consistent with section;

10 (2) Determined on an individual basis; and

11 (3) Of sufficient duration to provide the greatest likelihood of successful reintegration
12 into the community.

13 **12-19.4-6. Allotment of clothing, funds and transportation.**

14 (a) Upon the release of a prisoner on the expiration of the prisoner's term of
15 imprisonment, the department shall furnish the prisoner with:

16 (1) Suitable clothing;

17 (2) An amount of money, not more than five-hundred dollars (\$500), determined by the
18 department to be consistent with the needs of the offender and the public interest, unless the
19 department determines that the financial position of the offender is such that no sum should be
20 furnished; and

21 (3) Transportation to the prisoner's bona fide residence within the state, or to such other
22 place within the United States as may be authorized by the department, but in no event shall
23 transportation be provided to a place outside of this state if the prisoner is a Rhode Island
24 resident.

25 **12-19.4-7. Mandatory functional literacy requirement.**

26 (a) The department shall have in effect a mandatory functional literacy program for all
27 mentally capable inmates who are not functionally literate in each correctional institution within
28 six (6) months from the date of the enactment of this act.

29 (b) Each mandatory functional literacy program shall include a requirement that each
30 inmate participate in such program for a mandatory period sufficient to provide the inmate with
31 an adequate opportunity to achieve functional literacy, and appropriate incentives which lead to
32 successful completion of such programs shall be developed and implemented.

33 (c) As used in this section, the term "functional literacy" means an eighth grade
34 equivalence in reading and mathematics on a nationally recognized standardized test or functional

1 competency or literacy on a nationally recognized criterion-referenced test.

2 (d) Non-English speaking inmates shall be required to participate in an English as a
3 Second Language program until they function at the equivalence of the eighth grade on a
4 nationally recognized educational achievement test.

5 (e) The chief executive officer of each institution shall have authority to grant waivers for
6 good cause as determined and documented on an individual basis.

7 **12-19.4-8. Release from confinement.**

8 (a) The department shall establish prerelease planning procedures that help prisoners
9 acclimate back into society. The planning procedures shall include providing defendants with
10 information in the following areas:

11 (1) Health and nutrition;

12 (2) Employment;

13 (3) Literacy and education;

14 (4) Personal finance and consumer skills;

15 (5) Community resources;

16 (6) Personal growth and development;

17 (7) Release requirements and procedures; and

18 (8) Medical care.

19 (b) The department shall inform a person who is released from prison and required to
20 register under the sex offender registration and community notification act chapter 37.1 of title 11
21 ("the act"), of the requirements of that act as they apply to that person, and the same information
22 shall be provided to a person sentenced to probation by the probation officer responsible for
23 supervision of that person.

24 (c) The department shall assist prisoners, prior to release from a term of imprisonment, in
25 obtaining a social security card, driver's license or other official photo identification, and a birth
26 certificate.

27 (d) The department, the state and its agencies, officers, and employees shall be immune
28 from liability based on good faith conduct in carrying out this section.

29 **12-19.4-9. Recidivism prevention.**

30 (a) In order to prevent recidivism, increase public safety, rebuild ties between offenders
31 and their families and to encourage the development of and expand the availability of the
32 evidence based programs such as substance abuse treatment, the department through its division
33 of probation and parole shall provide sufficient transitional services for up to one year to include:

34 (1) Substance abuse counseling;

- 1 (2) Mental health counseling;
- 2 (3) Job training;
- 3 (4) Vocational training;
- 4 (5) Educational classes to provide for the completion of a general equivalency diploma;
- 5 and
- 6 (6) Medical care.

7 (b) In order to achieve these goals the department shall:

8 (1) Assess each prisoner's skill level, including academic, vocational, health, cognitive,
9 interpersonal, daily living, and related reentry skills, at the beginning of the term of imprisonment
10 of that prisoner to identify any areas in need of improvement prior to reentry;

11 (2) Generate a skills development plan for each prisoner to monitor skills enhancement
12 and reentry readiness throughout incarceration;

13 (3) Ensure that priority is given to the reentry needs of high-risk populations, such as sex
14 offenders, career criminals, and prisoners with mental health problems;

15 (4) Coordinate and collaborate with other agencies including the department of health and
16 criminal justice community-based organizations, and faith-based organizations to help effectuate
17 a seamless reintegration of prisoners into communities;

18 (5) Collect information about a prisoner's family relationships, parental responsibilities,
19 and contacts with children to help prisoners maintain important familial relationships and support
20 systems during incarceration and after release from custody; and

21 (6) Provide incentives as the department deems appropriate, for prisoner participation in
22 skills development programs.

23 **12-19.4-10. Elderly and terminally ill offenders.**

24 (a) The department shall conduct a pilot program to determine the effectiveness of
25 removing eligible elderly offenders and eligible terminally ill offenders from a prison facility and
26 placing such offenders on home detention or community confinement until the expiration of the
27 prison term to which the offender was sentenced. For purposes of this section community
28 confinement shall include a residence in a community treatment center, halfway house, restitution
29 center, mental health facility, alcohol or drug rehabilitation center or other community facility.

30 (b) In carrying out a pilot program as described herein, the department may release some
31 or all eligible elderly offenders and eligible terminally ill offenders from a prison facility to home
32 detention or community confinement.

33 (c) A violation by an eligible elderly offender or eligible terminally ill offender of the
34 terms of home detention (including the commission of another federal, state, or local crime) shall

1 result in the removal of that offender from home detention or community confinement and the
2 return of that offender to the designated institution in which that offender was imprisoned
3 immediately before placement on home detention/community confinement or to another
4 appropriate institution, as determined by the department.

5 (d) "Eligible elderly offender" means an offender in the custody of the department:

6 (1) Who is not less than sixty-five (65) years of age;

7 (2) Who is serving a term of imprisonment that is not life imprisonment based on
8 conviction for an offense or offenses that do not include any crime of violence or who shall be
9 required to register as a sex offender, and has served the greater of ten (10) years or two-thirds
10 (2/3) of the term of imprisonment to which the offender was sentenced;

11 (3) Who has not been determined by the department, on the basis of information that it
12 uses to make custody classifications, and in the sole discretion of the department, to have a
13 history of violence, or of engaging in conduct constituting a sex offense or other crime of
14 violence;

15 (4) Who has not escaped, or attempted to escape, from any penal institution; and

16 (5) Who has been determined by the department to be at no substantial risk of engaging
17 in criminal conduct or of endangering any person or the public if released to home detention or
18 community confinement.

19 (e) Eligible terminally ill offender. The term "eligible terminally ill offender" means an
20 offender in the custody of the department:

21 (1) Who has been determined by a licensed physician approved by the department to be:

22 (i) In need of care at a nursing home, intermediate care facility, or assisted living facility
23 as those terms are defined in section 232 of the National Housing Act (12 U.S.C.1715w); or

24 (ii) Diagnosed with a terminal illness;

25 (2) Who is serving a term of imprisonment that is not life imprisonment based on
26 conviction for an offense or offenses that do not include any crime of violence or who shall be
27 required to register as a sex offender, and has served the greater of ten (10) years or two-thirds
28 (2/3) of the term of imprisonment to which the offender was sentenced;

29 (3) Who has not been determined by the department, on the basis of information that it
30 uses to make custody classifications, and in the sole discretion of the department, to have a
31 history of violence, or of engaging in conduct constituting a sex offense or other crime of
32 violence;

33 (4) Who has not escaped, or attempted to escape, from any penal institution; and

34 (5) Who has been determined by the department to be at no substantial risk of engaging

1 [in criminal conduct or of endangering any person or the public if released to home detention or](#)
2 [community confinement.](#)

3 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 CRIMINAL PROCEDURE

1 This act would establish the sentencing reduction act and would require the department of
2 corrections to assist offenders with reintegration into society, provide them with counseling and
3 medical care, assist them in learning about finances, health care and the basic necessities of life.
4 It would also provide for early termination or relocation to home confinement and community
5 confinement for elderly and terminally ill offenders.

6 This act would take effect upon passage.

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