

2020 -- H 7029

=====
LC003202
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

—————
A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Representatives Lombardi, Hull, and Walsh

Date Introduced: January 09, 2020

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 RHODE ISLAND FIRST STEP ACT

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

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

9 (b) As used in this chapter, the term "department" means the Rhode Island department of
10 corrections.

11 **12-19.4-2. Sentencing factors to be considered.**

12 The court, in determining whether to impose a term of imprisonment for any defendant
13 convicted of a crime, shall consider the following:

14 (1) The seriousness of the offense, the history and characteristics of the defendant, the
15 need for rehabilitation, substance abuse treatment, mental health treatment, the need for
16 educational or vocational training and the defendant's prior criminal history.

17 (2) Notwithstanding the provisions of this chapter or the provisions of rule 35 of the rules
18 of criminal procedure, a judgment of conviction that includes such a sentence constitutes a final
19 judgment for all other purposes.

1 **12-19.4-3. Dignity for female prisoners.**

2 (a) The department shall not shackle any female inmate who is pregnant while
3 incarcerated. This ban shall continue for a period of three (3) months after the ending of the
4 pregnancy.

5 (b) The department shall provide and make available to all female prisoners sanitary
6 napkins and tampons at no cost.

7 **12-19.4-4. Modification of an imposed term of imprisonment.**

8 (a) The court may modify a term of imprisonment, upon motion of the department or
9 upon motion of the defendant if it finds that:

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

11 (2) The defendant is at least sixty-five (65) years of age, has served at least two-thirds
12 (2/3) of his or her sentence for the offense or offenses for which the defendant is currently
13 imprisoned, and a determination has been made by the director that the defendant is not a danger
14 to the safety of any other person or the community.

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

17 (c) In the case of a defendant who has been sentenced to a term of imprisonment based on
18 a sentencing provision that has subsequently been reduced, the court may reduce the term of
19 imprisonment, after considering the factors set forth in this section.

20 **12-19.4-5. Notification requirements- Modification based on terminal illness.**

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

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

24 (1) Not later than seventy-two (72) hours after the diagnosis, notify the defendant's
25 attorney, family members or health care designee of the defendant's condition and advise them
26 that they can prepare a request for sentence reduction on the defendant's behalf;

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

30 (3) Upon request from the defendant, family member or health care designee, ensure that
31 the department personnel assist the defendant, if not represented by counsel, in the preparation,
32 drafting and submission of a motion for sentence reduction, or assist them in preparing a request
33 that counsel be appointed to represent the defendant if he or she otherwise qualify for the services
34 of the public defender or court appointed counsel;

1 (4) Not later than fourteen (14) days of receipt of a request for a sentence reduction,
2 process said request;

3 (5) Ensure that all department facilities regularly and visibly post, including in prisoner
4 handbooks, staff training manuals and materials, facility law libraries and medical and hospice
5 facilities, and make available to prisoners upon demand, notice of:

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

7 (ii) The procedures and timelines for initiation and resolving requests for sentence
8 reductions; and

9 (iii) The right to appeal the department's denial of a request to the sentencing court.

10 **12-19.4-6. Release of a prisoner.**

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

16 (b) A prisoner who is serving a term of imprisonment of more than one year, other than a
17 term of imprisonment for the duration of the prisoner's life, may receive credit toward the service
18 of the prisoner's sentence, beyond the time served, of up to one-hundred twenty (120) days at the
19 end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of
20 the term, subject to determination by the department that, during that year, the prisoner has
21 displayed exemplary compliance with institutional disciplinary regulations. In the case of a
22 prisoner serving a life sentence, he or she may receive credit toward their parole eligibility date of
23 up to seventy-five (75) days at the end of each year. No prisoner shall receive credit toward the
24 service of their sentence if the department determines that, during that year, the prisoner has not
25 satisfactorily complied with the institutional regulations, or has incurred disciplinary infractions
26 in violation of any institutional regulation. Provided, however, the department may award the
27 prisoner such lesser credit as the department determines to be appropriate after considering the
28 nature and frequency of the violations. The department shall also consider whether the prisoner,
29 during the relevant period, has earned, or is making satisfactory progress toward earning, a high
30 school or college diploma or equivalent degree or has worked in prison industries, in any form of
31 employment, during the period of their incarceration.

32 (c) The department shall ensure that it has in effect an optional general educational
33 development (GED) program for inmates who have not earned a high school diploma or its
34 equivalent.

1 (d) The department shall ensure that a prisoner serving a term of imprisonment spends a
2 portion of the final months of that term, but in no event not more than twelve (12) months, in pre-
3 release custody, under conditions that will afford that prisoner a reasonable opportunity to adjust
4 to and prepare for the reentry of that prisoner into the community. For purposes of this chapter,
5 pre-release custody shall include home confinement, a residence in a community treatment center,
6 restitution center, mental health facility, alcohol or drug rehabilitation center or other community
7 facility or halfway house under the supervision of the department.

8 (e) The authority under this chapter may be used to place a prisoner in pre-release
9 custody for a term of ten percent (10%) of the remaining term of imprisonment of that prisoner or
10 six (6) months, whichever is longer. The department shall place prisoners with lower risk levels
11 and lower needs on home confinement for the maximum amount of time permitted under this
12 subsection. Those prisoners who are not considered to be low risk levels or those not with lower
13 needs shall also be considered for pre-release custody; provided, that the term in pre-release
14 custody shall not exceed five percent (5%) of the remaining term of imprisonment of that prisoner
15 or four (4) months, whichever is longer.

16 (f) The division of parole and probation shall, to the extent practicable, offer assistance
17 with job placement, counseling services and medical services to a prisoner during prerelease
18 custody under this subsection.

19 (g) The department shall issue regulations pursuant to this section not later than ninety
20 (90) days after the date of the enactment of this sentencing reduction act, which shall ensure that
21 placement in pre-release custody in a community is:

22 (1) Conducted in a manner consistent with this section;

23 (2) Determined on an individual basis; and

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

26 **12-19.4-7. Allotment of clothing, funds and transportation.**

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

29 (1) Suitable clothing;

30 (2) If the prisoner is considered indigent, an amount of money, not more than five-
31 hundred dollars (\$500), determined by the department to be consistent with the needs of the
32 offender and the public interest; and

33 (3) Transportation to the prisoner's bona fide residence within the state; provided,
34 however, that no transportation shall be provided to a place outside of this state if the prisoner is a

1 Rhode Island resident or if the prisoner has not obtained approval from the department to transfer
2 his or her probation/parole to another state.

3 **12-19.4-8. Mandatory Functional literacy requirement.**

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

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

11 (c) As used in this section, the term "functional literacy" means an eighth grade
12 equivalence in reading and mathematics on a nationally recognized standardized test or functional
13 competency or literacy on a nationally recognized criterion-referenced test.

14 (d) Non-English speaking inmates shall be required to participate in an English-as-a-
15 second language program until they function at an eighth grade equivalence on a nationally
16 recognized educational achievement test, or until the expiration of their sentence, whichever
17 comes first.

18 **12-19.4-9. Release from confinement.**

19 (a) The department shall establish pre-release planning procedures that help prisoners
20 acclimate back into society. The planning procedures shall include providing defendants with
21 information in the areas of education, vocational training, employment opportunities, the
22 availability of medical care, mental health and substance abuse counseling and community
23 resources that would otherwise assist them upon their release.

24 (b) The department shall inform a person who is released from prison and required to
25 register under the sex offender registration and notification act of the requirements of that act as
26 they apply to that person.

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

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

32 **12-19.4-10. Recidivism prevention.**

33 (a) In order to prevent recidivism, increase public safety, rebuild ties between offenders
34 and their families and to encourage the development of and expand the availability of the

1 evidence based programs such as substance abuse treatment, the department through its division
2 of probation and parole shall provide sufficient transitional services for up to one year to include
3 education, vocational training, employment opportunities, the availability of medical care, mental
4 health and substance abuse counseling and community resources that would otherwise assist them
5 upon their release.

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

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

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

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

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

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

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

22 **12-19.4-11. Elderly and terminally ill offenders.**

23 (a) The department shall establish a program to determine the effectiveness of removing
24 eligible elderly offenders and eligible terminally ill offenders from a prison facility and placing
25 such offenders in pre-release custody until the expiration of the prison term to which the offender
26 was sentenced.

27 (b) In carrying the program as described herein, the department may release some or all
28 eligible elderly offenders and eligible terminally ill offenders from a prison facility to pre-release
29 custody.

30 (c) A violation by an eligible elderly offender or eligible terminally ill offender of the
31 terms of pre-release custody, or the commission of another offense while in pre-release custody
32 shall result in the return of that offender to the designated institution in which that offender was
33 imprisoned immediately before placement in pre-release custody or to another appropriate
34 institution, as determined by the department.

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

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

3 (2) Who has served at least two-thirds (2/3) of the term of imprisonment to which the
4 offender was sentenced and in the case of an offender serving a life sentence, that has served at
5 least the minimum term of years required before parole eligibility;

6 (3) Who does not have a history of violence while incarcerated, has not attempted to
7 escape or escaped during his or her term of imprisonment and who has not engaged in conduct
8 which would place them at substantial risk of re-offending or endangering any person if released
9 to pre-release confinement.

10 (e) "Eligible terminally ill offender" means an offender in the custody of the department:

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

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

14 (ii) Diagnosed with a terminal illness.

15 (2) Who has served at least two-thirds (2/3) of the term of imprisonment to which the
16 offender was sentenced and in the case of an offender serving a life sentence, that has served at
17 least the minimum term of years required before parole eligibility;

18 (3) Who does not have a history of violence while incarcerated, has not attempted to
19 escape or escaped during his or her term of imprisonment and who has not engaged in conduct
20 which would place him or her at substantial risk of re-offending or endangering any person if
21 released to pre-release confinement.

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

=====
LC003202
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE

1 This act would establish the Rhode Island first step act and require the department of
2 corrections (department) to assist offenders with reintegration into society, provide them with
3 counseling and medical care, education and provide for early termination or relocation to pre-
4 release confinement for elderly and terminally ill offenders.

5 This act would take effect upon passage.

=====
LC003202
=====