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LC004906

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO CRIMINAL PROCEDURE - BAIL AND RECOGNIZANCE

Introduced By: Senators Cano, Metts, Quezada, Crowley, and Nesselbush

Date Introduced: February 25, 2020

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Section 12-10-6 of the General Laws in Chapter 12-10 entitled "Preliminary Proceedings in District Courts" is hereby amended to read as follows:

12-10-6. Recognizance or commitment on charge of offense beyond trial jurisdiction of district court.

Whenever any person shall be brought before the district court upon a complaint charging him or her with an offense which is not within the jurisdiction of the court to try and determine, and it shall appear to the court that the accused is probably guilty, the court shall, if the offense is bailable by it, require the accused [to abide by conditions of pretrial release, as defined in §12-13-1.3, or](#) to enter into a recognizance in any sum that the court shall direct, with sufficient surety to be approved by the court, with condition that the accused will appear at the superior court for the county in which the division is situated at the time fixed for the attendance of the grand jury in that court which is next after seven (7) days from the day when the recognizance was ordered, and not to depart the superior court without leave, and in the meantime keep the peace and be of good behavior toward all the people of this state. The recognizance shall be immediately certified as soon as may be by the district court to the court before which the accused shall recognize to appear. Whenever the district court shall require any person to enter into a recognizance for his or her appearance before it or before any other court, and shall not give the recognizance, the person shall be immediately committed to the adult correctional institutions, there to remain until he or she is discharged pursuant to law. If the required recognizance is for the appearance of the accused before

1 the superior court, the fact of the commitment shall be immediately certified to the superior court
2 before which the accused has been held to appear.

3 SECTION 2. Sections 12-13-1, 12-13-1.3 and 12-13-24.1 of the General Laws in Chapter
4 12-13 entitled "Bail and Recognizance" are hereby amended to read as follows:

5 **12-13-1. Right to release pending trial on giving of recognizance.**

6 Every person who is held on any criminal process to answer to any indictment, information,
7 or complaint against him or her shall be released [upon conditions of pretrial release as defined in](#)
8 [§12-13-1.3, or](#) upon giving recognizance with sufficient surety or sureties before a justice of the
9 supreme or superior court or before a justice of the district court, when the complaint is pending in
10 that court or the person is held to answer to that court, in the sum named in the process, if any has
11 been named in it, and if none is named, then in any sum that the justice shall deem reasonable, to
12 appear before the court where the indictment, information, or complaint is pending against him or
13 her, or to which he or she may be bound over to appear, to answer to the indictment, information,
14 or complaint, and to answer to it whenever called upon so to do, and abide the final order of the
15 court, and in the meantime keep the peace and be of good behavior. Any justice may take the
16 recognizance in any place within the state, and the recognizance shall be returned to the court to
17 which the accused has recognized to appear.

18 **12-13-1.3. Pretrial release.**

19 (a) Unless otherwise provided, a detainee shall be eligible for pretrial release ~~or reduced~~
20 ~~bail if he or she fails to post bail.~~

21 (b) "Pretrial release" means release of a defendant without bail but upon an order to abide
22 by the conditions as set by the court. Release on non-monetary conditions shall be applied to secure
23 the presence of the accused and protect the safety of the community.

24 (c) The department of corrections [or pretrial services](#) shall collect information concerning
25 the background and circumstances of the pretrial detainee. The ~~department's~~ investigation shall
26 include the following information and any other factors as shall be appropriate to the case:

27 (1) Marital status.

28 (2) Name and address of dependents.

29 (3) Past and present employment, including place of employment, position held and length
30 of employment.

31 (4) Whether the defendant is under the care of a licensed physician or uses medication
32 prescribed by a licensed physician.

33 (5) Any physical or mental condition affecting the defendant's behavior.

34 (6) Education.

1 (7) Prior criminal record, including facts indicating that the defendant is likely to be a
2 danger to the community if released without restrictions.

3 (8) Prior court appearances and record of appearance or non-appearance.

4 (9) Ties to this community and to other communities.

5 (10) Financial resources.

6 (d) If, as a result of this investigation, the department of corrections [or pretrial services](#)
7 concludes that the pretrial detainee is an appropriate candidate to be considered by the court for
8 pretrial release ~~or reduced bail~~, the department [or pretrial services](#) shall present its findings to the
9 court.

10 (e) Upon a determination by the court that a defendant is suitable for release on
11 recognizance subject to conditions set by the court, the court in its discretion may also impose the
12 least onerous of the following conditions necessary to assure the defendant's appearance in court:

13 (1) Imposition of condition of release involving field supervision with or without special
14 conditions. Field supervision shall require notification to defendants released prior to trial of their
15 court dates.

16 (2) Imposition of condition of release involving placement of defendant on intensive
17 supervision, with or without special conditions. Intensive supervision shall require contact with the
18 officials designated by the courts and prompt notification to the court of all apparent violations of
19 pre-trial release conditions or arrest of persons released to its custody.

20 (3) Imposition of a condition of release involving placement of the defendant on
21 community confinement pursuant to § 42-56-20.2.

22 [\(4\) There shall be a presumption that any conditions of release imposed shall be non-](#)
23 [monetary in nature and the court shall impose the least restrictive conditions or combination of](#)
24 [conditions necessary to reasonably ensure the appearance of the defendant for further court](#)
25 [proceedings and protect the integrity of the judicial proceedings from a specific threat to a witness](#)
26 [or participant. Conditions of release may include, but not be limited to, electronic home monitoring,](#)
27 [curfews, drug counseling, no contact orders with any named victim or witness, and in-person](#)
28 [reporting. The court shall consider the defendant's socio-economic circumstance when setting](#)
29 [conditions of release or imposing monetary bail.](#)

30 (f) This section shall not be construed to preclude review by the court of a defendant's bail
31 status at any time.

32 **12-13-24.1. Pretrial services unit.**

33 (a) Creation of unit; definitions. There is created within the [superior court and](#) district court
34 a pretrial services unit to provide pre-arraignment and post-arraignment services to defendants.

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

2 (i) The results of a risk screen;

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

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

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

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

17 (4) "Risk assessment tool" means an empirically validated, evidence-based screening
18 instrument that demonstrates reduced instances of a defendant's failure to appear for further court
19 proceedings or prevents future criminal activity. Such risk assessment tool shall not discriminate
20 on the basis of race, gender, education level, socio-economic status, or neighborhood.

21 (b) Pre-arraignment report. Whenever any person shall be taken into custody by any peace
22 officer for the purpose of bringing that person before a court for arraignment or any other
23 proceeding which may result in that person being detained pending a final adjudication of the
24 charge, ~~if the person is charged with a felony, or a misdemeanor domestic violence offense under~~
25 ~~§ 12-29-2 and has prior domestic violence offenses or other indications of risk,~~ the pretrial services
26 unit shall, time permitting, prepare a pre-arraignment report to assist the court in establishing bail
27 for a defendant by assessing the defendant's likelihood of appearing at future court proceedings or
28 determining if the defendant poses a real and present threat to the physical safety of any person or
29 persons, and any post-arraignment screening of the accused deemed necessary by the court or the
30 pretrial services unit, ~~and shall.~~ Pretrial services shall obtain relevant information, records, and
31 documents that may be useful to the judicial officer in determining the form and type of
32 recognizance and conditions placed on the defendant.

33 (c) Delivery of report. The pre-arraignment report and any post-arraignment screening shall
34 be immediately delivered to the judicial officer before whom the accused shall be brought for the

1 purpose of determining the form and conditions of recognizance.

2 (d) [Deleted by P.L. 2017, ch. 342, § 4 and P.L. 2017, ch. 353, § 4].

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

8 SECTION 3. This act shall take effect on January 1, 2021.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO CRIMINAL PROCEDURE - BAIL AND RECOGNIZANCE

1 This act would establish procedures for the supreme, superior and district courts to
2 establish non-monetary bail for pretrial release of detainees who are deemed eligible following an
3 investigation and report submitted by the pretrial services unit utilizing the risk assessment tool
4 established hereunder.

5 This act would take effect on January 1, 2021.

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