

2020 -- S 2818

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LC005147
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO CRIMINAL PROCEDURE - COSTS

Introduced By: Senators Quezada, McCaffrey, and Lynch Prata

Date Introduced: March 12, 2020

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 12-20-10 of the General Laws in Chapter 12-20 entitled "Costs" is
2 hereby amended to read as follows:

3 **12-20-10. Remission of costs -- Prohibition against remitting restitution to victims of**
4 **crime -- Ability to pay -- Indigency.**

5 (a) The payment of costs in criminal cases may, upon application, be remitted by any justice
6 of the superior court; provided, that any justice of a district court may, in his or her discretion, remit
7 the costs in any criminal case pending in his or her court, or in the case of any prisoner sentenced
8 by the court, and from which sentence no appeal has been taken. Notwithstanding any other
9 provision of law, this section shall not limit the court's inherent power to remit any fine, fee,
10 assessment or other costs of prosecution, provided no order of restitution shall be suspended by the
11 court.

12 (b) For purposes of §§ 12-18.1-3(d), 12-21-20, 12-25-28(b), 21-28-4.01(c)(3)(iv) and 21-
13 28-4.17.1, the following conditions shall be prima facie evidence of the defendant's indigency and
14 limited ability to pay:

15 (1) Qualification for and/or receipt of any of the following benefits or services by the
16 defendant:

17 (i) temporary assistance to needy families

18 (ii) social security including supplemental security income and state supplemental
19 payments program;

- 1 (iii) public assistance
2 (iv) disability insurance;~~or~~
3 (v) food stamps;or
4 (vi) qualifying for the services of the public defender as an "indigent person" pursuant to §
5 12-15-8 of the general laws.

6 (2) Despite the defendant's good faith efforts to pay, outstanding court orders for payment
7 in the amount of one-hundred dollars (\$100) or more for any of the following:

- 8 (i) restitution payments to the victims of crime;
9 (ii) child support payments; or
10 (iii) payments for any counseling required as a condition of the sentence imposed
11 including, but not limited to, substance abuse, mental health, and domestic violence.

12 (3) When the procedures prescribed by § 12-21-20 to determine a defendant's ability to pay
13 are not performed by the court.

14 SECTION 2. Section 12-21-20 of the General Laws in Chapter 12-21 entitled "Recovery
15 of Fines, Penalties, and Forfeitures" is hereby amended to read as follows:

16 **12-21-20. Order to pay costs and determination of ability to pay.**

17 (a) If, upon any complaint or prosecution before any court, the defendant shall be ordered
18 to pay a fine, enter into a recognizance or suffer any penalty or forfeiture, he or she shall also be
19 ordered to pay all costs of prosecution, unless directed otherwise by law. No order requiring
20 payment shall enter unless and until the procedures prescribed by this section to determine a
21 defendant's ability to pay are performed by the court.

22 (b) In superior court, the judge shall make a preliminary assessment of the defendant's
23 ability to pay immediately after sentencing by use of the procedures specified in this section.

24 (c) In district court, the judge shall make a preliminary assessment of the defendant's ability
25 to pay immediately after sentencing or nearly thereafter as practicable by use of the procedures
26 specified in this section.

27 (d) The defendant's ability to pay and payment schedule shall be determined by use of
28 standardized procedures including a financial assessment instrument. The financial assessment
29 instrument shall be:

- 30 (1) based upon sound and generally accepted accounting principles;
31 (2) completed based on a personal interview of the defendant and includes any and all
32 relevant information relating to the defendant's present ability to pay including, but not limited to,
33 the information contained in § 12-20-10; and
34 (3) made by the defendant under oath.

1 (e) The financial instrument may, from time to time and after hearing, be modified by the
2 court.

3 (f) When persons come before the court for failure to pay fines, fees, assessments and other
4 costs of prosecution, or court ordered restitution, and their ability to pay and payment schedule has
5 not been previously determined, the judge, the clerk of the court, or their designee shall make these
6 determinations by use of the procedures specified in this section.

7 (g) Nothing in this section shall be construed to limit the court's ability, after hearing in
8 open court, to revise findings about a person's ability to pay and payment schedule made by the
9 clerk of the court or designee, based upon the receipt of newly available, relevant, or other
10 information.

11 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would provide that a defendant's qualification for the services of the public
2 defender constitutes prima facie evidence of their indigency and their limited ability to pay court
3 costs and that no costs shall be ordered unless procedures for determining ability to pay are
4 followed.

5 This act would take effect upon passage.

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