

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO CRIMINAL PROCEDURE -- PROBATION AND PAROLE SUPPORT ACT

Introduced By: Senator Michael J. McCaffrey

Date Introduced: March 24, 2022

Referred To: Senate Judiciary

(Judiciary)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 12-18.1-3 of the General Laws in Chapter 12-18.1 entitled "Probation
2 and Parole Support Act" is hereby amended to read as follows:

3 **12-18.1-3. Court costs.**

4 (a) The court shall assess as court costs, in addition to those otherwise provided by law,
5 against all defendants charged with a felony, misdemeanor, or petty misdemeanor, and who plead
6 nolo contendere or guilty or who are found guilty of the commission of those crimes, as follows:

7 (1) Where the offense charged is a felony and carries a maximum penalty of five (5) or
8 more years imprisonment, three hundred dollars (\$300) or ten percent (10%) of any fine imposed
9 on the defendant by the court, whichever is greater;

10 (2) Where the offense charged is a felony and carries a maximum penalty of less than five
11 (5) years imprisonment, one hundred eighty dollars (\$180) or ten percent (10%) of any fine imposed
12 on the defendant by the court, whichever is greater; and

13 (3) Where the offense charged is a misdemeanor, sixty dollars (\$60.00) or ten percent
14 (10%) of any fine imposed on the defendant by the court, whichever is greater.

15 (b) These court costs shall not be assessed ~~whether or not~~ when the defendant is sentenced
16 to prison ~~and in no case shall they be remitted by the court for thirty (30) days or more on any~~
17 count, multiple counts, or multiple charges and shall be remitted if a defendant subsequently serves
18 thirty (30) days or more on a violation.

19 (c) When there are multiple counts or multiple charges to be disposed of simultaneously,

1 the judge shall have the authority to suspend the obligation of the defendant to pay on all counts or
2 charges above ~~two (2)~~ one.

3 (d) ~~If the court determines that the defendant does not have the ability to pay the costs as~~
4 ~~set forth in this section, the judge may by specific order mitigate the costs in accordance with the~~
5 ~~court's determination of the ability of the offender to pay the costs.~~ If a defendant is indigent, or
6 demonstrates a limited or inability to pay, in accordance with the standards and procedures
7 contained in §§ 12-20-10 and 12-21-20, the court costs contemplated by this section may be waived
8 or reduced.

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

11 **12-20-10. Remission of costs -- Prohibition against remitting restitution to victims of**
12 **crime -- Ability to pay -- Indigency.**

13 (a) The payment of court costs, assessments, and fees in criminal cases ~~may shall~~, upon
14 application or sworn testimony, presented during sentencing or anytime thereafter, be remitted ~~by~~
15 ~~any justice of the superior court; provided, that any justice of a district court may, in his or her~~
16 ~~discretion, remit the costs in any criminal case pending in his or her court, or in the case of any~~
17 ~~prisoner sentenced by the court, and from which sentence no appeal has been taken~~ in whole based
18 on a determination that a defendant is indigent pursuant to the standards set forth in this section.
19 ~~Notwithstanding any other provision of law, this section shall not limit the court's inherent power~~
20 ~~to remit any fine, fee, assessment or other costs of prosecution, provided no order of restitution~~
21 ~~shall be suspended by the court.~~

22 (b) ~~For purposes of §§ 12-18.1-3(d), 12-21-20, 12-25-28(b), 21-28-4.01(e)(3)(iv) and 21-~~
23 ~~28-4.17.1, the following conditions shall be prima facie evidence of the defendant's indigency and~~
24 ~~limited ability to pay:~~

25 (1) Qualification for and/or receipt of any of the following benefits or services by the
26 defendant shall be prima facie evidence of the defendant's indigency:

- 27 (i) temporary assistance to needy families;
- 28 (ii) social security including supplemental security income and state supplemental
29 payments program;
- 30 (iii) public assistance;
- 31 (iv) disability insurance; or
- 32 (v) food stamps.

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

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

5 (2) The superior and district courts may establish additional criteria and/or procedures for
6 the determination of an ability to pay and for the administration of this section.

7 (b) If a defendant is not indigent, the payment of court costs, assessments and fees in
8 criminal cases may, upon sworn testimony or application during sentencing or anytime thereafter,
9 be remitted in whole or in part by any justice of the superior or district court or their designee
10 pursuant to a determination of limited or inability to pay based upon the standards set forth in this
11 section, or any other considerations the court may deem appropriate. Provided further that any
12 judge of a district court may remit the court costs, assessments, and fees in criminal case(s) pending
13 in his or her court, or in the case of any prisoner sentenced by the court, where no appeal of the
14 sentence has been taken.

15 (1) In making its assessment of a defendant's limited or inability to pay, the court may
16 consider the defendant's good faith efforts to pay, and/or his or her outstanding court orders for
17 payments in the amount of one hundred dollars (\$100) or more for any of the following:

- 18 (i) Restitution payments to the victims of crime;
19 (ii) Child support payments; or
20 (iii) Payments for any counseling required as a condition of the sentence imposed
21 including, but not limited to, substance abuse, mental health, and domestic violence.
22 (iv) Fines imposed as part of the sentence.

23 (2) Notwithstanding any other provision of law, this section shall not limit the court's
24 inherent power to remit any fine, court costs, fees, assessments or other costs of prosecution,
25 provided no order of restitution shall be suspended by the court.

26 SECTION 3. Section 12-21-20 of the General Laws in Chapter 12-21 entitled "Recovery
27 of Fines, Penalties, and Forfeitures" is hereby amended to read as follows:

28 **12-21-20. Order to pay costs and determination of ability to pay.**

29 (a) If, upon any complaint or prosecution before any court, the defendant shall be ordered
30 to pay a fine, enter into a recognizance or suffer any penalty or forfeiture, he or she shall also be
31 ordered to pay all costs of prosecution, unless directed otherwise by law.

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

34 ~~(c) In district court, the judge shall make a preliminary assessment of the defendant's ability~~

1 ~~to pay immediately after sentencing or nearly thereafter as practicable by use of the procedures~~
2 ~~specified in this section.~~

3 (b) If a defendant is determined to be indigent by the standards set forth in § 12-20-10(a)
4 following the defendant's sworn testimony or by submission of a financial assessment instrument,
5 all court costs, assessments and fees shall be waived. The financial assessment instrument shall be:

6 (1) Created by the court based upon sound and generally accepted accounting principles
7 and may be modified by the court from time to time;

8 (2) Include any and all relevant information relating to the defendant's present ability to
9 pay; and

10 (3) Be certified or made by the defendant under oath.

11 (c) Non-indigent defendants claiming a limited or inability to pay court costs, assessments
12 and fees may request the court waive court costs, assessments, and fees upon submission of a
13 completed financial assessment instrument. Upon submission of a completed financial assessment
14 instrument, a defendant may during sentencing or any time after the disposition of the matter
15 request an ability to pay determination to seek the remission or reduction of any fines, court costs,
16 assessments, fees and other costs of prosecution, or changes to the terms of a payment schedule.

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

20 ~~(1) based upon sound and generally accepted accounting principles;~~

21 ~~(2) completed based on a personal interview of the defendant and includes any and all~~
22 ~~relevant information relating to the defendant's present ability to pay including, but not limited to,~~
23 ~~the information contained in § 12-20-10; and~~

24 ~~(3) made by the defendant under oath.~~

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

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

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

1 SECTION 4. 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 -- PROBATION AND PAROLE SUPPORT ACT

- 1 This act would modify current procedures for the application and collection of court costs,
2 fees and assessments in all criminal matters. The act will eliminate all costs, assessments and fees
3 for persons serving a prison sentence of over thirty (30) days and those determined to be indigent.
4 This act would take effect upon passage.

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