

2022 -- S 2899

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- DISTRICT COURT

Introduced By: Senators McCaffrey, Coyne, and F Lombardi

Date Introduced: April 26, 2022

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 8-8-8.1 and 8-8-16.2 of the General Laws in Chapter 8-8 entitled  
2 "District Court" are hereby amended to read as follows:

3 **8-8-8.1. Administrator/clerk -- Magistrate.**

4 (a) Administrator/clerk. There shall be a district court administrator/clerk who shall be  
5 appointed by the chief judge in his or her capacity as administrative head of the court, and who  
6 shall hold office at the pleasure of the administrative judge. The administrator/clerk shall perform  
7 such duties and attend to such matters as may be assigned to the administrator/clerk by the  
8 administrative judge, other than those duties assigned to the chief clerk in § 8-8-19. Said duties  
9 may be assigned by the chief judge.

10 (b) Magistrate. Any person holding the position of district court administrator/clerk who is  
11 a member of the bar of Rhode Island may be appointed district court magistrate by the chief judge  
12 in his or her capacity as administrative head of the court, subject to the advice and consent of the  
13 senate. The district court magistrate shall hold said office for a term of ten (10) years and until a  
14 successor is appointed and qualified; and the magistrate shall retain whatever right he or she may  
15 have to the position of district court administrator/clerk pursuant to this section. Nothing herein  
16 shall be construed to prohibit the appointment of the magistrate for more than one term, subject to  
17 the advice and consent of the senate. Any person holding office of district court magistrate on July  
18 1, 1999 may continue in full authority in said position until such time as an appointment is made  
19 and the nominee qualified pursuant to this subsection.

1 (c) The district court magistrate shall have the power to hear and determine such matters  
2 as may be assigned to the district court magistrate by the chief judge all to the same effect as if  
3 done by a judge of the district court, including but not limited to:

4 (1) Matters relating to the determination of, monitoring, collection, and payment of  
5 restitution and court ordered fines, fees, and costs or the ordering of community service in lieu of  
6 or in addition to the payment of restitution, fines, fees, and costs, consistent with other provisions  
7 of the general laws;

8 (2) Arraignments and pretrial motions in misdemeanor, petty misdemeanor, violation, and  
9 ordinance cases and initial appearances and probable cause hearings in felony cases;

10 (3) Bail hearings pursuant to R.I. Const., Art. I, Sec. IX and all other bail matters pursuant  
11 to chapter 13 of title 12 and the rules of criminal procedure, including but not limited to motions to  
12 modify bail, bail revocation hearings, bail forfeiture hearings, and bail source hearings;

13 (4) All matters relating to fugitives from justice pursuant to chapter 9 of title 12;

14 (5) Probation revocation hearings;

15 (6) All matters relating to small claims and consumer claims pursuant to chapter 16 of title  
16 10, including any pretrial motions including motions relating to the special service of process, the  
17 entry of defaults and default judgments, the trial of such cases and the entry of judgment after such  
18 trials, and all matters relating to the enforcement of such judgments, including but not limited to  
19 the ordering of installment payments and trustee process; and

20 (7) Complaints for judicial review of the decision of an administrative agency pursuant to  
21 chapter 35 of title 42 by making proposed findings of fact and recommendations for the disposition  
22 of the complaints to a judge of the court. Any party may object to any portion of the magistrate's  
23 proposed findings and recommendations within ten (10) days after receipt of a copy thereof. That  
24 party shall file with the clerk of the sixth division of the district court and serve on all parties written  
25 objections which shall specifically identify the portions of the proposed findings and  
26 recommendations to which objection is made and the basis for the objection. A judge shall make a  
27 de novo determination of those portions to which objection is made and may accept, reject, or  
28 modify, in whole or in part, the findings or recommendations made by the magistrate. Absent a  
29 timely objection filed in accordance with this subdivision, the proposed prevailing party shall, upon  
30 expiration of the ten (10) days following the service of the magistrate's proposed findings and  
31 recommendations, submit a proposed order for signature of the judge to whom the case has been  
32 assigned.

33 (d) The magistrate may be authorized:

34 (1) To regulate all proceedings before him or her;

1 (2) To do all acts necessary or proper for the efficient performance of his or her duties;

2 (3) To require the production before him or her of books, papers, vouchers, documents,  
3 and writings;

4 (4) To rule upon the admissibility of evidence;

5 (5) To issue subpoenas for the appearance of witnesses, to put witnesses on oath, to  
6 examine them, and to call parties to the proceeding and examine them upon oath;

7 (6) To adjudicate a person in contempt and to order him or her fined or to order him or her  
8 imprisoned for not more than seventy-two (72) hours, pending review by a judge of the court, for  
9 failure to appear in response to a summons or for refusal to answer questions or produce evidence  
10 or for behavior disrupting a proceeding or other contempt of his or her authority;

11 (7) To adjudicate a person in contempt and to order him or her fined or to order him or her  
12 imprisoned for not more than seventy-two (72) hours, pending review by a judge of the court, for  
13 failure to comply with a pending order to provide payment or to perform any other act;

14 (8) To issue a *capias* and/or body attachment for the failure of a party or witness to appear  
15 after having been properly served or given notice by the court and, should the court not be in  
16 session, the person apprehended may be detained at the adult correctional institution, if an adult, or  
17 at the Rhode Island training school for youth, if a child, until the next session of the court;

18 (9) To issue writs of habeas corpus to bring before him or her or a judge of the court any  
19 person in jail or in prison to be examined as a witness in a suit or proceeding, civil or criminal,  
20 pending before the court, or whose presence is necessary as a party or otherwise necessary so that  
21 the ends of justice may be attained, and for no other purpose; and

22 (10) To issue warrants of arrest and search warrants to the same extent as an associate judge  
23 of the court.

24 (e) Except as otherwise indicated, a party aggrieved by an order entered by the district court  
25 magistrate shall be entitled to a review of the order, whether by appeal or otherwise, by a judge of  
26 the court. The court shall, by rules of procedure, establish procedures for review of contempt and  
27 adjudications of the magistrate.

28 (f) The magistrate shall be:

29 (1) Governed by the commission on judicial tenure and discipline, chapter 16 of this title,  
30 in the same manner as justices and judges;

31 (2) Subject to all provisions of the canons of judicial ethics;

32 (3) Subject to all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

33 (g) Any district court magistrate who has been engaged for a period of twenty (20) years  
34 and has reached the age of sixty (60) years, may upon retirement, at his or her own request and at

1 the direction of the chief justice of the supreme court, subject to the retiree's physical and mental  
2 competence, be assigned to perform such services as a magistrate of the district court as the chief  
3 judge of the district court shall prescribe. When so assigned and performing such service, the  
4 district court clerk/magistrate shall have all the powers and authority of a magistrate of the district  
5 court but otherwise shall have no powers nor be authorized to perform any judicial duties. Such a  
6 retired district court magistrate shall not be counted in the number of magistrates provided by law  
7 for the district court.

8 ~~(e)~~(h) The provisions of this section shall be afforded liberal construction.

9 **8-8-16.2. District court clerk/magistrate.**

10 (a) Any person who is a member of the bar of Rhode Island may be appointed district court  
11 clerk/magistrate by the chief judge in his or her capacity as administrative head of the court, subject  
12 to the advice and consent of the senate. The district court clerk/magistrate shall hold that office for  
13 a term of ten (10) years and until a successor is appointed and qualified. Nothing herein shall be  
14 construed to prohibit the assignment of the district court clerk/magistrate to more than one such  
15 term, subject to the advice and consent of the senate. The district court clerk/magistrate shall have  
16 the power to hear and determine any matters that may be assigned to the district court  
17 clerk/magistrate by the chief judge all to the same effect as if done by a judge of the district court,  
18 including, but not limited to, matters relating to the determination of, monitoring, collection and  
19 payment of restitution and court ordered fines, fees and costs or the ordering of community service  
20 in lieu of or in addition to the payment of restitution, fines, fees and costs, consistent with other  
21 provisions of the general laws.

22 (b) The clerk/magistrate may be authorized:

23 (1) To regulate all proceedings before him or her;

24 (2) To do all acts necessary or proper for the efficient performance of his or her duties;

25 (3) To require the production before him or her of books, papers, vouchers, documents and  
26 writings;

27 (4) To rule upon the admissibility of evidence;

28 (5) To issue subpoenas for the appearance of witnesses, to put witnesses on oath, to  
29 examine them and to call parties to the proceeding and examine them upon oath;

30 (6) To adjudicate a person in contempt and to order him or her fined or to order him or her  
31 imprisoned for not more than seventy-two (72) hours, for failure to appear in response to a  
32 summons or for refusal to answer questions or produce evidence or for behavior disrupting a  
33 proceeding or other contempt of his or her authority; provided; however, that no such imprisonment  
34 shall occur prior to review by a judge of the court.

1 (7) To adjudicate a person in contempt and to order him or her fined or to order him or her  
2 imprisoned for not more than seventy-two (72) hours, for failure to comply with a pending order to  
3 provide payment or to perform any other act; provided, however, that no such imprisonment shall  
4 occur prior to review by a judge of the court.

5 (8) To issue a capias and/or body attachment for the failure of a party or witness to appear  
6 after having been properly served or given notice by the court and, should the court not be in  
7 session, the person apprehended may be detained at the adult correctional institutions, if an adult,  
8 or at the Rhode Island training school for youth, if a child, until the next session of the court;

9 (9) To issue writs of habeas corpus to bring before him or her or a judge of the court any  
10 person in jail or in prison to be examined as a witness in a suit or proceeding, civil or criminal,  
11 pending before the court, or whose presence is necessary as a party or otherwise necessary so that  
12 the ends of justice may be attained, and for no other purpose; and

13 (10) To issue warrants of arrest and search warrants to the same extent as an associate judge  
14 of the court.

15 (c) Except as otherwise indicated, a party aggrieved by an order entered by the district court  
16 clerk/magistrate shall be entitled to a review of the order, whether by appeal or otherwise, by a  
17 judge of the court. The court shall, by rules of procedure, establish procedures for review of  
18 contempt and adjudications of the clerk/magistrate.

19 (d) The district court clerk/magistrate shall:

20 (1) Be governed by the commission on judicial tenure and discipline, pursuant to chapter  
21 16 of this title, in the same manner as justices and judges;

22 (2) Be subject to all provisions of the canons of judicial ethics;

23 (3) Be subject to all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

24 (4) Receive any salary that may be established by the state court administrator pursuant to  
25 § 8-15-4. The provisions of this section shall be afforded liberal construction.

26 (e) Any district court clerk/magistrate who has been engaged for a period of twenty (20)  
27 years and has reached the age of sixty (60) years, may upon retirement, at his or her own request  
28 and at the direction of the chief justice of the supreme court, subject to the retiree's physical and  
29 mental competence, be assigned to perform such services as a magistrate of the district court as the  
30 chief judge of the district court shall prescribe. When so assigned and performing such service, the  
31 district court clerk/magistrate shall have all the powers and authority of a magistrate of the district  
32 court but otherwise shall have no powers nor be authorized to perform any judicial duties. Such a  
33 retired district court clerk/magistrate shall not be counted in the number of magistrates provided by  
34 law for the district court.

1 SECTION 2. Section 36-10-36 of the General Laws in Chapter 36-10 entitled "Retirement  
2 System - Contributions and Benefits" is hereby amended to read as follows:

3 **36-10-36. Post-retirement employment.**

4 (a) On and after July 7, 1994, no member who has retired under the provisions of titles 16,  
5 36, or 45 may be employed or reemployed by any state agency or department unless any and all  
6 retirement benefits to which he or she may be entitled by virtue of the provisions of titles 16, 36,  
7 or 45 are suspended for the duration of any employment or reemployment. No additional service  
8 credits shall be granted for any post-retirement employment or reemployment and no deductions  
9 shall be taken from an individual's salary for retirement contribution. Notice of any such post-  
10 retirement employment or reemployment shall be sent monthly to the retirement board by the  
11 employing agency or department and by the retired member.

12 (b) Any member who has retired under the provisions of titles 16, 36, or 45 may be  
13 employed or reemployed by any municipality within the state that has accepted the provisions of  
14 chapter 21 of title 45 and participates in the municipal employees' retirement system for a period  
15 of not more than seventy-five (75) working days or one hundred fifty (150) half days with half-day  
16 pay in any one calendar year without any forfeiture or reduction of any retirement benefits and  
17 allowances the member is receiving, or may receive, as a retired member. Pension payments shall  
18 be suspended whenever this period is exceeded. No additional contributions shall be taken, and no  
19 additional service credits shall be granted, for this service. Notice of this employment or  
20 reemployment shall be sent monthly to the retirement board by the employer and by the retired  
21 member.

22 (c) Any member who has retired under the provisions of title 16, 36, or 45 may be employed  
23 or reemployed by any municipality within the state that has not accepted the provisions of chapter  
24 21 of title 45 and that does not participate in the municipal employees' retirement system.

25 (d) Notwithstanding the provisions of this section:

26 (1) Any retired member of the system shall be permitted to serve as an elected mayor, the  
27 town administrator, the city administrator, the town manager, the city manager, the chief  
28 administrative officer, or the chief executive officer of any city or town, city or town council  
29 member, school committee member, or unpaid member of any part-time state board or commission  
30 or member of any part-time municipal board or commission, and shall continue to be eligible for,  
31 and receive, the retirement allowance for service other than that as a mayor, administrator, council  
32 member, school committee member, or member of any state board or commission or member of  
33 any part-time municipal board or commission; provided, however, that no additional service credits  
34 shall be granted for any service under this subsection;

1           (2) Any retired member, who retired from service at any state college, university, state  
2 school, or who retired from service as a teacher under the provisions of title 16, or who retired from  
3 service under title 36 or title 45, may be employed or reemployed, on a part-time basis, by any state  
4 college, university, or state school for the purpose of providing classroom instruction, academic  
5 advising of students, and/or coaching. Compensation shall be provided at a level not to exceed the  
6 salary provided to other faculty members employed under a collective bargaining agreement at the  
7 institution. In no event shall "part-time" mean gross pay of more than eighteen thousand dollars  
8 (\$18,000) in any one calendar year. Any retired member who provides such instruction or service  
9 shall do so without forfeiture or reduction of any retirement benefit or allowance; provided,  
10 however, that no additional service credits shall be granted for any service under this subsection;

11           (3) Any retired member who retired from service as a teacher under the provisions of title  
12 16, or as a state employee who, while an active state employee, was certified to teach driver  
13 education by the department of elementary and secondary education or by the board of governors  
14 for higher education, may be employed or reemployed, on a part-time basis, by the department of  
15 elementary and secondary education or by the board of governors of higher education for the  
16 purpose of providing classroom instruction in driver education courses in accordance with § 31-  
17 10-19 and/or motorcycle driver education courses in accordance with § 31-10.1-1.1. In no event  
18 shall "part-time" mean gross pay of more than fifteen thousand dollars (\$15,000) in any one  
19 calendar year. Any retired teacher who provides that instruction shall do so without forfeiture or  
20 reduction of any retirement benefit or allowance the retired teacher is receiving as a retired teacher;  
21 provided, however, that no additional service credits shall be granted for any service under this  
22 subsection;

23           (4) Any retired member who retired from service as a registered nurse may be employed  
24 or reemployed, on a per-diem basis, for the purpose of providing professional nursing care and/or  
25 services at a state-operated facility in Rhode Island, including employment as a faculty member of  
26 a nursing program at a state-operated college or university. In no event shall "part-time" mean gross  
27 pay of more than a period of seventy-five (75) working days or one hundred fifty (150) half days  
28 with half pay in any one calendar year. Any retired nurse who provides such care and/or services  
29 shall do so without forfeiture or reduction of any retirement benefit or allowance the retired nurse  
30 is receiving as a retired nurse; provided, however, that no additional service credits shall be granted  
31 for any service under this subsection. Pension payments shall be suspended whenever this period  
32 is exceeded. No additional contributions shall be taken and no additional service credits shall be  
33 granted for this service. Notice of this employment or reemployment shall be sent monthly to the  
34 retirement board by the employer and by the retired member;

1           (5) Any retired member who, at the time of passage of this section, serves as a general  
2 magistrate within the family court and thereafter retires from judicial service, may be employed or  
3 reemployed by the family court to perform such services as a general magistrate of the family court  
4 as the chief judge of the family court shall prescribe without any forfeiture or reduction of any  
5 retirement benefits and allowances that he or she is receiving or may receive. For any such services  
6 or assignments performed after retirement, the general magistrate shall receive no compensation  
7 whatsoever, either monetary or in kind. No additional contributions shall be taken and no additional  
8 service credits shall be granted for this service; ~~and~~

9           (6) Any retired district court clerk/magistrate or magistrate of the district court who shall  
10 subsequently be assigned to perform service in accordance with §§ 8-8-8.1 or 8-8-16.2(e), may be  
11 employed or reemployed by the district court to perform such services as a magistrate as the chief  
12 judge of the district court shall prescribe without any forfeiture or reduction of any retirement  
13 benefits and allowance that he or she is receiving or may receive. For any such services or  
14 assignment performed after retirement, the district court clerk/magistrate or magistrate shall  
15 receive, in addition to his or her retirement pension, the difference in pay and fringe benefits  
16 between his or her retirement pension, and that of a sitting magistrate of the district court with  
17 comparable state service time. No additional contributions shall be taken and no additional service  
18 credits shall be granted for this service; and

19           ~~(6)~~(7) Any retired member of the system shall be permitted to serve as a municipal  
20 employee without any forfeiture or reduction of any retirement benefits and allowances that he or  
21 she is receiving or may receive; provided, that said member shall be appointed by and serves at the  
22 pleasure of the highest elected chief executive officer, as defined in § 45-9-2, in any city or town  
23 subject to the provisions of chapter 9 of title 45 entitled "Budget Commissions" relating to the  
24 appointment of a fiscal overseer, budget commission, receiver, and/or financial advisor. Provided  
25 further, that no additional service credits shall be granted for any service under this subsection.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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RELATING TO COURTS AND CIVIL PROCEDURE -- DISTRICT COURT

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1           This act would permit a retired district court clerk/magistrate or a magistrate of the district  
2 court who has reached age sixty (60) and has served for more than twenty (20) years to be recalled  
3 for service and to be compensated for such service.

4           This act would take effect upon passage.

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