

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- SUPERIOR COURT

Introduced By: Senators McCaffrey, Lombardi, Archambault, Conley, and Nesselbush

Date Introduced: March 15, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 8-2-39.2 of the General Laws in Chapter 8-2 entitled "Superior  
2 Court" is hereby amended to read as follows:

3 **8-2-39.2. Drug court magistrate -- Appointment, duties and powers.**

4 (a) For the purposes of this chapter:

5 (1) "Non-violent" means and includes all charges that are not crimes of violence, the  
6 following being a list of all charges considered to be crimes of violence for the purposes of this  
7 section: murder, manslaughter, first degree arson, kidnapping with intent to extort, robbery, first  
8 degree sexual assault, second degree sexual assault, first and second degree child molestation,  
9 assault, assault with intent to murder, assault with intent to rob, assault with intent to commit first  
10 degree sexual assault, entering a dwelling house with intent to commit murder, robbery, or sexual  
11 assault.

12 (2) "Drug addicted person" means a person who exhibits a maladaptive pattern of  
13 behavior resulting from drug use, including one or more of the following: impaired control over  
14 drug use; compulsive use; and/or continued use despite harm, and craving.

15 (b) There is hereby created within the superior court the position of Drug Court  
16 Magistrate who shall be appointed by the presiding justice of the superior court with the advice  
17 and consent of the senate. The persons appointed to serve as Drug Court Magistrates shall be  
18 members of the bar of Rhode Island. The powers and duties of the Drug Court Magistrate shall be  
19 prescribed in the order appointing him or her in addition to those described herein.

1           The Drug Court Magistrate's term shall be ten (10) years and until a successor is  
2 appointed and qualified. Nothing in this article shall prohibit a Drug Court Magistrate from being  
3 reappointed for additional ten (10) year terms by the presiding justice of the superior court with  
4 the advice and consent of the senate. He or she shall receive a salary equivalent to that received  
5 by the special magistrate assigned to the superior court. The Drug Court Magistrate shall preside  
6 over the Adult Drug Court. The Adult Drug Court Program shall combine the coercive powers of  
7 the court with a therapeutic regimen in order to rehabilitate drug addicted defendants.

8           (c) The Drug Court Magistrate shall be empowered to hear and decide as a superior court  
9 justice all matters relating to those adult offenders who come before the jurisdiction of the  
10 superior court on any offense relating to the offender's participation in the Adult Drug Court. In  
11 addition, the Drug Court Magistrate shall have the power to impose a period of incarceration  
12 upon a plea of guilty or nolo contendere, and also have the power to confine any person who has  
13 been found to be in violation of any conditions previously imposed by the superior court.

14           (d) The Drug Court Magistrate shall make the final determination as to whether a  
15 defendant is admitted into the program. Individuals meeting the following criteria, shall be  
16 screened by staff working at the office of the attorney general upon the department's own referral,  
17 upon a request by counsel entered on behalf of a defendant; upon request by a judge of the  
18 superior or district court, or, in the case of a person waivable by the family court, by a judge of  
19 that court, or the department of corrections for admittance into the Adult Drug Court:

20           (1) The individual is charged with or convicted of an alcohol or drug related offense or  
21 with an appropriate non-violent offense.

22           (2) The individual has no pending charges ~~or prior convictions~~ for felony crimes of  
23 violence.

24           (3) The individual has no pending charges ~~or prior convictions~~ for delivery of a  
25 controlled substance.

26           (4) The defendant is a drug addicted person.

27           (e) All individuals accepted into Drug Court will be bound by a Drug Court contract, as  
28 defined by the Adult Drug Court, which sets forth the court's expectations, the role and  
29 responsibilities of the Drug Court, the conditions imposed upon and the responsibilities of the  
30 defendant, and the treatment plan goals and strategies. If a defendant fails to abide by the Drug  
31 Court conditions and orders, he or she may be terminated from the program by the Drug Court  
32 judge and sentenced as he or she deems appropriate.

33           (f) The Drug Court Magistrate shall be empowered to hear and decide as a superior court  
34 justice all matters that may come before the superior court pursuant to chapter 37.1 of title 11

1 "Sexual Offender Registration and Community Notification."

2 (g) The Drug Court Magistrate and/or the presiding justice of the superior court may fix  
3 the venue of any person who is before the superior court as a participant in the Adult Drug Court  
4 or who is alleged to be a sexual predator, and who has filed an objection to community  
5 notification.

6 (h) In addition, at the discretion of the presiding justice of the superior court, the drug  
7 court magistrate shall have the duties, responsibilities and powers authorized in subsections 8-2-  
8 39(b), (c) and (d).

9 (i) The Drug Court Magistrate shall be governed by the commission on judicial tenure  
10 and discipline, chapter 16 of title 8 in the same manner as justices and judges; shall be subject to  
11 all provisions of the canons of judicial ethics or code of judicial conduct; and shall be subject to  
12 all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

13 (j) A party aggrieved by an order entered by the Drug Court Magistrate shall be entitled  
14 to a review of the order by a justice of the superior court. Unless otherwise provided in the rules  
15 of procedure of the court, such review shall be on the record and appellate in nature. The superior  
16 court shall, by rules of procedure, establish procedures for reviews of orders entered by a Drug  
17 Court Magistrate, and for enforcement of contempt adjudications of a Drug Court Magistrate.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- SUPERIOR COURT

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1           This act would allow those individuals with prior convictions for possession with intent  
2 to deliver or crimes of violence, to be eligible for the drug court program in Superior Court.

3           This act would take effect upon passage.

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