



RHODE ISLAND SUPREME COURT

Office of General Counsel

Licht Judicial Complex

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April 11, 2024

Via Electronic Mail (SenateJudiciary@rilegislature.gov)

The Honorable Robert E. Craven

House Judiciary Committee

Rhode Island State House

House Lounge

Providence, RI 02903

Re: House Bill #7048: An Act Relating to Criminal Procedure: Sentencing and Execution

Dear Chairman Craven::

I write on behalf of the Rhode Island Judiciary regarding House Bill #7048, scheduled to be heard and considered this evening before the House Judiciary Committee. This bill would require a judge or magistrate to make numerous findings of fact whenever a criminal sentence or probation violation sentence is to be imposed. The finding of fact includes whether the person is a parent, or caregiver to an elderly or disabled family member, and his or her absence would disrupt the care of the individual. The list of factors includes whether the person is breastfeeding, involved in the day to day caregiving activities, and an assessment of the relationship between the defendant and the dependent, the financial support given by the defendant, the any special, medical, educational and psychological needs of the dependent. It also requires the court to permit presentation of a family impact statement, which would include mitigating information presented by the family.

This legislation seems unnecessary given the sentencing procedures already in place. Judges and magistrates take these factors, as well as others, into consideration whenever there is a sentence to be imposed. Prior to imposition of a criminal sentence, judges and magistrates receive sentencing memos from defense counsel which outlines numerous factors, including those listed in this legislation. Sentencing memos may include letters from family and friends of the defendant. Pursuant to R.I. Gen Law § 12-19-6, a pre-sentence report is provided to the Court after conviction. This report outlines a defendant's family history, upbringings, current obligations, job and homelife status, etc. The defendant can provide whatever information he or she would like the Court to have in fashioning a sentence. The pre-sentence report also provides the judge with an impact statement from the victim, if applicable. Also, during plea negotiations with the judge or magistrate these factors are discussed and taken in account when determining an appropriate sentence. Lastly, at sentencing the defendant always has the right to address the court before sentence is imposed.

Also, of concern to the Judiciary is the language in the statute requiring that "the court shall impose" a non-jail sentence unless it is determined that the defendant poses a significant risk to community that outweighs the risk of harm to defendant's children or family members. This provision creates separation of power concerns; therefore, the Judiciary requests the term "shall" be amended to "may."

Thank you for allowing the Judiciary weigh in on this legislation.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen Kelly". The signature is written in dark ink and is positioned above the printed name.

Kathleen Kelly
General Counsel
Rhode Island Supreme Court