



STATE OF RHODE ISLAND JUDICIARY

SUPREME COURT
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March 10, 2026

Via Electronic Mail (SenateJudiciary@rilegislature.gov)

Chairman Matthew LaMountain
Senate Judiciary on Committee
Rhode Island General Assembly
Room 313
Providence, Rhode Island 02903

Re: Senate Bill #2162: An Act Relating to Criminal Procedure – Sentencing and Execution

Dear Chairman LaMountain:

I write on behalf of the Rhode Island Judiciary regarding Senate Bill #2162, scheduled to be heard and considered this evening before the Senate Committee on Judiciary. 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, regarding whether the defendant is a parent and whether his or her absence would disrupt the care of his or her dependent(s). The list of factors to consider is whether the person is breastfeeding the child, whether the individual is involved in day-to-day caregiving activities, the age of the child at issue, an assessment of the relationship between the defendant and the dependent, the financial support given by the defendant, and any special, medical, educational and psychological needs of the dependent. It would also require the court to permit presentation of a family impact statement, which would include mitigating information presented by the family as well as testimony from family and community members, written statements, videos, and other documentation. Senate Bill # 2162 further dictates that unless the court finds that the “parent poses a significant risk to the community that outweighs the risk of harm to the defendant’s child . . . the court shall impose a sentence of probation, a suspended sentence or home confinement . . .”

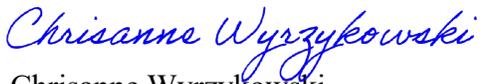
This legislation seems unnecessary given the sentencing procedures already in place. Judges and magistrates currently take these factors, as well as many others, into consideration whenever there is a sentence to be imposed. Prior to imposing a criminal sentence, judges and magistrates receive sentencing memorandums which outline numerous factors, including those listed in this legislation. Sentencing memorandums may also 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, outlining a defendant’s family history, upbringing, current obligations, employment, and homelife status, etc. The defendant can provide whatever additional 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, the factors outlined in the legislation may be discussed and considered when determining an appropriate sentence. Lastly, at sentencing the defendant always has the right to address the court before a sentence is imposed. Therefore, the sentencing obligations imposed by Senate Bill #2162 would be unnecessarily duplicative of current court procedures and wasteful of judicial resources.

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 the community that outweighs the risk of harm to defendant's child. . . ." This provision creates distinct separation of power concerns and potentially usurps the constitutionally mandated authority of the Judiciary.

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

Sincerely,



Chrisanne Wyrzykowski
General Counsel
Rhode Island Supreme Court