

**SUPERIOR COURT OF THE STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS**

Pursuant to G.L. 1956 (1997 Reenactment) § 8-6-2, and subject to the approval of the Supreme Court, the undersigned members of the Rhode Island Superior Court, constituting a majority or more thereof, do hereby adopt the amendments to the Superior Court Rules of Criminal Procedure and Superior Court Sentencing Benchmarks.

/s/
Alice Bridget Gibney
Presiding Justice

/s/
Robert D. Krause
Associate Justice

/s/
Melanie Wilk Thunberg
Associate Justice

/s/
Patricia A. Hurst
Associate Justice

Michael A. Silverstein
Associate Justice

/s/
Netti C. Vogel
Associate Justice

Stephen P. Nugent
Associate Justice

/s/
Susan E. McGuirl
Associate Justice

/s/
Daniel A. Procaccini
Associate Justice

Jeffrey A. Lanphear
Associate Justice

/s/
Allen P. Rubine
Associate Justice

/s/
William E. Carnes, Jr.
Associate Justice

/s/
Bennett R. Gallo
Associate Justice

/s/
Kristen E. Rodgers
Associate Justice

/s/
Brian P. Stern
Associate Justice

/s/
Walter R. Stone
Associate Justice

/s/
Brian Van Couyghen
Associate Justice

/s/
Sarah Taft-Carter
Associate Justice

Luis M. Matos
Associate Justice

/s/
Joseph A. Montalbano
Associate Justice

Richard A. Licht
Associate Justice

_____/s/
Patricia L. Harwood
General Magistrate

_____/s/
John F. McBurney, III
Magistrate

_____/s/
Patrick T. Burke
Special Magistrate

_____/s/
John T. Flynn
Magistrate

DATED this 16th day of March 2016

SUPERIOR COURT RULES OF CRIMINAL PROCEDURE

VII. JUDGMENT

Rule 32 Sentence and judgment

(f) *Revocation of Probation.* The court shall not revoke probation or revoke a suspension of sentence or impose a sentence previously deferred except after a hearing at which the defendant shall be afforded the opportunity to be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing. Prior to the hearing the State shall furnish the defendant and the court with a written statement specifying the grounds upon which action is sought under this subdivision. No revocation shall occur unless the State establishes by a fair preponderance of the evidence that the defendant breached a condition of his/her probation or deferred sentence or failed to keep the peace or remain on good behavior.

Committee Notes for 2016 Amendment. Prior to amending subsection 32(f), the state only was required to prove to the reasonable satisfaction of the hearing justice or magistrate that the defendant had violated his or her previously imposed probation. *State v. Ferrara*, 883 A.2d 1140, 1144 (R.I. 2005); *Walker v. Langlois*, 104 R.I. 274, 282, 243 A.2d 733, 737 (R.I. 1968). The 2016 amendment, by adding the last sentence to the subsection, increases that burden by requiring the state to prove the revocation allegation by a fair preponderance of the evidence. In addition, the amendment reflects and recites the Rhode Island Supreme Court's settled rule that revocation should not be determined by whether the defendant violated any offense which may form the basis of the violation allegation; rather, the "sole purpose of a probation violation hearing is for the trial justice to determine whether the conditions of probation—'[k]eeping the peace and remaining on good behavior—have been violated.'" *State v. Hazard*, 68 A.3d 479, 499 (R.I. 2013), citing *State v. Gromkiewicz*, 43 A.3d 45, 48 (R.I. 2012)) (quoting *State v. Waite*, 813 A.2d 982, 985 (R.I. 2003)). *State v. Znosko*, 755 A.2d 832, 835 (R.I. 2000) (holding that "the appropriate role of the hearing justice was to determine 'only whether in [the hearing justice's] discretion [the defendant's] conduct on the day in question had been lacking in the required good behavior expected and required by his probationary status'" (quoting *State v. Godette*, 741 A.2d 742, 745 (R.I. 2000))). It is the consensus of the committee that the amendment should operate prospectively from the time of its adoption, not retroactively.

Rule 35 Correction, decrease or increase of sentence

(c) *Motion for Termination of Probation.* At any time after a defendant has served at least three years of a term of probation, the probation unit of the department of corrections may file a motion with the Superior Court to amend the defendant's sentence and terminate a defendant's probation. This rule shall apply to all persons on probation and otherwise eligible, including persons sentenced to probation prior to the adoption of this rule.

- a. A petition recommending probation termination shall contain:
 1. A signed certificate stating:
 - a. that notice has been provided to the Attorney General who shall be afforded an opportunity to object to the request; and

- b. that defendant's probation is not conditioned on an active no-contact order; and
 - c. that defendant has completed all of the terms and conditions of his/her probation, including, but not limited to, counseling requirements, community service orders, restitution orders, and costs and fines; and
 - d. that there are no pending probation/deferred sentence revocation proceedings filed against the defendant; and
 - e. that during the three (3) years preceding the filing of the petition, the court has not declared defendant a violator of his/her probation/deferred sentence; and
 - f. that defendant is not currently on probation, suspended sentence, deferred sentence or is the subject of a pending charge(s) in this or any other jurisdiction.
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- b. The petition shall be served at least ten (10) days before the time fixed for the hearing. The court may grant the petition to discharge the defendant from probation, after hearing, if in the discretion of the judge or magistrate, he/she finds that the defendant has demonstrated that he/she no longer requires supervision.
 - c. The Defendant shall appear in open court, with or without counsel and may be questioned, under oath by the attorney for the state or the justice or magistrate.

Committee Notes for 2016 Amendment. The 2016 amendment, by adding subsection (c), provides a defendant the opportunity to seek early termination of his or her probation by petition filed on his or her behalf by the probation department. It is the consensus of the committee that the amendment should apply to all persons on probation and otherwise eligible, including persons sentenced to probation prior to the adoption of 35(c).

SUPERIOR COURT SENTENCING BENCHMARKS

4. Suspended sentences, probation, and fines.

The benchmark ranges represent time to be served in jail. The use of suspended sentences, probation, and fines, in addition, is not precluded.

- a. Suspended Sentence. The court may impose a sentence and suspend the execution of the sentence, in whole or in part.
- b. Probation.
 - i. The court may place a defendant on probation with or without the imposition of a term of incarceration and/or a suspended sentence. The benchmark ranges for probation are presumed to be appropriate to reduce recidivism through effective supervision and programs, and to hold defendants accountable for restitution and for compliance with conditions.
 - ii. The court may attach conditions to a sentence of probation upon finding that there is a reasonable basis that the condition(s) ~~or conditions~~ will advance the purpose of probation and will ~~does~~ not impose a greater burden than necessary to achieve that purpose. Those conditions may include, but are not limited to:
 - a. Satisfaction of a restitution order or other economic sanction;
 - b. Completion of a treatment or other rehabilitative program;
 - c. Performance of a community-service order;
 - d. No contact order with a victim of the criminal offense.

6. Violation of suspended sentence/probation/deferred sentence.

The benchmark sentencing ranges are also presumed to be appropriate in cases where the sentence has been suspended or deferred and where the defendant has been declared a violator of the conditions of his or her probation. In those situations, the sentencing judge should refer to the benchmark which is applicable to the original offense. Departures from the ranges should be made only when substantial and compelling circumstances exist. As in other instances, if the sentence is outside the benchmark range, the judge must give specific reasons for the departure on the record.

*Examples of substantial and compelling circumstances which might justify departure from the benchmarks are listed in [the Benchmarks].

Substantial and compelling circumstances for departure from the benchmarks may include the following:

- (a) Any of the examples previously set forth in Section 1. "Departure from the Benchmarks," items (a) through (q);
- (b) the nature of the violation, whether technical or based upon misconduct reflecting a failure to keep the peace and/or be of good behavior;
- (c) if based upon misconduct, whether it constitutes a misdemeanor, a felony, or any offense involving violence or the use of force or threat of force or violence;

- (d) the defendant's record and length of compliance with his or her probation/deferred sentence.

SENTENCING BENCHMARKS

PROBATION BENCHMARKS

Benchmark 37

For felony offenses, other than crimes of violence, the term of probation should not exceed three years. Departures from the probation range should be made only when substantial and compelling circumstances exist.

- A. The judge or magistrate must give specific reasons for the departure on the record.
- B. These guidelines do not apply to cases where the court has imposed a no contact order or a restitution order as a condition of probation.
- C. These guidelines do not apply to crimes of violence. For purposes of this benchmark, crimes of violence shall mean any one of the following crimes or an attempt to commit that crime: murder, manslaughter, sexual assault, child molestation, mayhem, robbery, burglary, assault with a dangerous weapon, assault or battery involving serious bodily injury, arson, breaking and entering, child molestation, kidnapping, DWI resulting in death or serious injury, driving to endanger resulting in death or serious injury, any felony violation involving the illegal manufacture, sale, or delivery of a controlled substance, or possession with intent to manufacture, sell, or deliver a controlled substance classified in Schedule I or Schedule II of § 21-28-2.08, any violation of §§ 21-28-4.01.1 or 21-28-4.01.2 or conspiracy to commit any violation of these statutes, and/or assault with intent to commit any offense punishable as a felony; upon any conviction of an offense punishable as a felony offense under § 12-29-5 or any felony involving force or violence, the threat of force or violence, or the use of a firearm.