

What Does The New Probation Law Mean For Me?

Basics

In Rhode Island, when someone is on probation, they can have that probation revoked for committing a new crime or for breaking the conditions of their probation, including the requirement to “keep the peace and be of good behavior.” If probation is revoked, the defendant can be given a new prison sentence, sometimes a very long one, without actually being convicted of any new crime. They do have the right to challenge the probation violation at a hearing. At this hearing the prosecution must prove to the judge that the defendant violated probation, by either committing a new crime or failing to keep the peace, but they must only prove this to the judge’s “reasonable satisfaction,” which is much easier than proving something “beyond a reasonable doubt” at a full trial.

What does the law do?

Previously, someone on probation could be charged with a new crime but never convicted of that crime, and still go to prison for it. For example, they could be charged with a crime, have their probation revoked, be sentenced to prison, and then the new charge is dismissed. The new law gives defendants more rights to challenge new criminal charges. Someone on probation who is charged with a new crime now has the following option:

1. Contest the new crime and the violation and refuse to accept a plea bargain for both (if a plea bargain is accepted, the new law does not help the defendant later).
2. Go to hearing on the probation violation. If the defendant wins, they are free, if they lose, they will generally be sentenced to prison.
3. Continue to refuse to plea to the new criminal charge itself.
4. If the charge is dropped for lack of evidence, the defendant can file a motion to be released. This is still a new process, but according to the new law, the defendant should be released.
5. If the charge is not dropped and the defendant is acquitted at trial, the defendant is released.

What does it not do?

1. The defendant can still be arrested and incarcerated while awaiting trial on a 32(f) violation (meaning they are being charged with failing to keep the peace).
2. Defendants can still be held without bail while awaiting trial.
3. The defendant can still be sentenced to prison as a probation violator if they lose the violation hearing, even if the charge itself is dropped. However, if the charge is dropped for lack of evidence, the new law makes it likely the sentence will be ended.
4. The new law does not mean that a defendant charged with a new crime will get out of prison quickly, even if they have a strong case that they are innocent. They may have to sit in prison for a long time, even years, while they wait for the trial on the new charge.

How do you use the law?

If a defendant is in prison serving a sentence:

If defendant already had their probation revoked and is in prison and the new charge was dismissed or they acquitted a trial, the defendant should contact their lawyer immediately. The lawyer can file a motion to have the sentence ended. However, this only applies to individuals that took their probation violations to hearing. If they pled not contest to the probation violation, the law does not apply to them.

If the defendant is on probation and is charged with a new crime:

Innocent defendants now have slightly more leverage. Defendants should consult with their lawyers before making any decision about what to do. If a defendant thinks they can win a trial on the new charge, and they want to take the charge to trial, the new law will only apply to them if they do not plea bargain to the violation. Defendants should be sure to discuss this with their attorneys before accepting any plea bargain.

Why doesn't the law do more?

The new law does not fully protect people on probation from false charges. It is only a start at providing adequate rights to people on probation. However, it is a large improvement on the previous system. Even this moderate reform took four years and hundreds of hours of work to pass. Together, we need to continue to work to make sure all people have the rights necessary to protect themselves from false incarceration.

HISTORY

On June 12th, 2010, the Justice and Innocence Bill became Rhode Island Law.

Previously, if a person on probation was accused of a new crime, they could be sent back to prison on a probation violation. Even if they were not found guilty of the new charge, they remained in prison for the violation.

This new law is a sensible reform that requires those accused of a new crime to be released from prison if they are found not guilty, or if the charges in the new case were dismissed.

OpenDoors has pushed for this change for 5 years, and is overjoyed that innocent people can no longer be unjustly imprisoned on what is often known as a 32(f).



Special thanks to everyone who fought hard for this reform, especially Rep. David Segal, Senator Rhoda Perry, the Office of the Public Defender, Direct Action for Rights and Equality, those who shared their stories about unjust imprisonment, and dozens of volunteers who donated their time and energy towards this effort.

Please contact OpenDoors if you have further questions.

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