State of Rhode Island and Providence Plantations
State House
Providence, Rhode Island 02903-1196
401-222-2080

Donald L. Carcieri
Governor

November 9, 2009

TO THE HONORABLE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES:

In accordance with the provisions of Section 14, Article IX of the Constitution of the State of Rhode Island and Section 43-1-4 of the Rhode Island General Laws, I transmit, with my disapproval, 2009 H 5040, Substitute A, "An Act Relating to Criminal Procedure – Sentence and Execution."

This act would require the termination of imprisonment for an individual who has allegedly violated the terms of probation or a suspended sentence through a new offense if: 1) the defendant has been found not guilty; 2) the defendant is acquitted due to motion to dismiss; 3) the grand jury returns a "no true bill"; 4) a "no information" is returned by an assistant or special assistant to the Attorney General; or 5) the State does not proceed due to lack of probable cause. The current law provides for a termination of imprisonment for individuals with a deferred sentence under limited circumstances. This new legislation would extend and make automatic the termination of imprisonment for individuals who have allegedly violated the terms of their probationary and suspended sentences, but were acquitted of the subsequent charges.

At face value, automatically terminating the incarceration of an individual who is charged with a subsequent offense, but is not prosecuted for the new allegation or is otherwise exonerated, would appear to serve the interests of justice. However, because of the diverse nature and varying circumstances that may lead to an acquittal, along with a lower standard of proof required for a violation of a prior sentence imposed on a criminal found guilty and serving that sentence, justice would be thwarted by a statutory requirement to mindlessly and automatically terminate incarceration.

It is well settled that under current law, violations of probation or a suspended sentence do not depend upon a new criminal charge. The Rhode Island Supreme Court has continually held that a new criminal charge is not a requisite for a violation of probation, nor has it held that the defendant must be found guilty of a new charge to uphold a violation of probation. State v. Goddu, 639 A.2d 62, 63 (R.I. 1994), Charest v. Howard, 285 A.2d 381 (R.I. 1972).

A violation of probation or a suspended sentence is not synonymous with the commission of a subsequent crime. This legislation fails to distinguish between the standards for a violation of probation or a suspended sentence and the "beyond a reasonable doubt" standard which is required to be found guilty of a subsequent offense. An individual serving probation or a suspended sentence enters into a contractual agreement with the state that requires "[k]eeping the peace and remaining on good behavior." State v. McCarthy, 945 A.2d 318, 327 (R.I. 2008) (citations omitted). If an offender breaches that contract, the State may request the court to declare that the defendant has violated the terms of probation.

Often times a prosecution of a new offense will not proceed for circumstances that may have nothing to do with the whether the person is guilty of a subsequent charge. For example, in the case of a convicted child molester, a parent of a minor victim may decide that proceeding with a new allegation, which would require the minor to take the stand multiple times, may be too traumatic for the child. Likewise, in the case of a domestic assault, the spouse victim may be unavailable to the prosecution at the time of trial or too fearful to take the stand. However, in these cases, subject to the discretion of the court, the individual who was previously convicted of a crime and serving a sentence and is now charged with a new offense, should be held accountable under the terms of the original sentence.

The Judiciary currently has discretion to determine whether a violation of the terms of probation or a suspended sentence was committed. A violation hearing is not a trial. The Supreme Court held that a finding of a violation probation under Super. R. Crim. P. 32(f) need only be found by "reasonably satisfactory evidence" that the alleged violator did not keep the peace and be of good behavior. State v. Znosko, 755 A.2d 832, 834 (R.I. 2000) (*citing* State v. Kennedy, 702 A.2d 28, 31 (R.I. 1997)). The discretion as to whether the threshold for a violation of probation or a suspended sentence was achieved should remain with our judicial officers and not be automatic. This legislation has the potential to require the "beyond a reasonable doubt" standard to be employed in evaluating a probation violation; a proposition which would threaten the safety, security and welfare of our citizens.

Similarly, the Attorney General strongly objects to this legislation in its current form for the same reasons as stated above. An unintended consequence is that the State may be less inclined to enter into a plea agreement in a case which would involve a suspended sentence or probation. This result would increase the demand on the judiciary and would throw Rhode Island's current criminal procedure system into turmoil.

While I understand there is concern in cases involving a mistaken identity, which would result in an individual being wrongfully incarcerated, I believe that our current system provides the Judiciary with complete and unfettered discretion to prevent such injustice. Therefore, this unnecessary legislation would undeservingly benefit individuals who have been convicted of a

crime and are serving a sentence, but also who have subsequently breached the terms of their agreement with the State by failing to keep the peace and remain on good behavior.

Therefore, in the interests of public safety and welfare in Rhode Island, I disapprove of this legislation and respectfully urge your support of this veto.

Sincerely,

Donald L. Carcieri
Governor