

Rhode Island Criminal Misdemeanor- Probation-filings-suspended Sentences, Convictions

This article explains pleas and sentencing in Rhode Island (RI) for criminal misdemeanors. If you are charged with a misdemeanor crime in Rhode Island you should read this legal article very carefully. However, do not use this article as a substitute for seeking independent legal advice from a lawyer. This article was written by attorney, David Sleprow 401-437-1100. A misdemeanor is any offense punishable by up to one year in Jail. Typical misdemeanors are: driving under the influence of alcohol (dui / dwi), shoplifting, domestic assault, Second (2nd) offense refusal to take the breathalyzer, driving on a suspended license, writing bad checks, domestic vandalism, simple assault and battery, domestic disorderly, reckless driving, disorderly conduct, etc. There are different rules that apply to driving with suspended licenses and this article does not fully address those provisions.

It is a very bad idea for a person to represent themselves (pro-se) in a criminal case. Please note that this article only applies to Rhode Island misdemeanor offenses and does not apply to any other states!

At the arraignment, A person should almost always say not guilty and hire an attorney. If a person cannot afford a lawyer then the person should go to the Public Defender. After the arraignment the matter will be set for a pretrial conference a couple of weeks later. In some very limited circumstances a person can work out a plea deal at the arraignment. It is usually a very bad idea for a person to enter into a plea agreement without an attorney.

At the pretrial conference a person can change their plea after meeting with the prosecutor and or the judge and after finding out what the prosecutor is offering for a a sentence. A defendant can negotiate with the prosecutor through their lawyer. If a plea agreement cannot be worked out at the pretrial conferences the matter will be set for trial. The matter also could be scheduled for motions prior to the trial if motions are requested.

A person should never change their plea from not guilty to nolo contendere or guilty without a plea deal from the prosecutor.

In Rhode Island, a defendant can enter one of four pleas: guilty, not guilty, nolo contendere or an "alfred plea".

Guilty and Not Guilty Pleas

The pleas of guilty and not guilty are obvious. If the plea is not guilty then the matter will be scheduled for a trial on the merits in which the prosecution must prove beyond a reasonable doubt that the person is guilty of the alleged offense. The person will be presumed innocent and it is the prosecutions burden to prove that the person is guilty. Usually, it is a very very bad idea to take a guilty plea! Guilty pleas or a finding of guilt after a trial is always a criminal conviction in Rhode Island.

Nolo Contendere Plea

Nolo contendere means a person is not contesting the charges. When a defendant takes a nolo contendere plea in Rhode island, the defendant is indicting that he does not want to contest the charges but is also essentially admitting to the charges.

What is the difference between a guilty plea and a nolo contendere plea in rhode Island? There is a huge difference! A guilty plea is always a criminal conviction under Rhode Island law. A criminal conviction has major negative implications especially when a person applies for employment. A plea of nolo contendere may not constitute a criminal conviction in Rhode Island. A plea of nolo contendere is only a conviction in Rhode Island if there is a sentence of confinement (such as the ACI or home confinement), a suspended sentence or a fine imposed.

For example, A plea of nolo contendere with a sentence of probation and a contribution to the violent crimes indemnity fund or court costs will not constitute a conviction under Rhode Island law! For example, A plea of nolo contendere with a sentence of a filing and a contribution to the violent crimes indemnity fund (vcif) will not constitute a conviction under Rhode Island law.

However, anything with a fine attached to it will be a conviction under Rhode Island law. Therefore, it is important that the defendant gets either no fine or a contribution to the victims fund or court costs rather than a fine.

All misdeameanor plea agreements in Rhode Island should be nolo contendere with court costs or a contribution towards the victims indemnity fund rather than guilty pleas!

Alfred Pleas

Alfred Pleas are strongly disfavored by judges in Rhode Island (RI) and are difficult to get. Alfred pleas derive from a United States Supreme Court case. In an Alfred plea, a defendant will admit that the state has sufficient evidence to

convict him or her if the case went to trial but will not admit to anything.

DUI / Drunk Driving charges

In Rhode Island, any plea to drunk driving, driving under the influence, DUI/ DWI is a conviction under Rhode Island law. A breathalyzer refusal plea of guilty or "admitting to sufficient facts" is not a criminal conviction because a breathalyzer refusal is a civil case.

Guilty Finding after Trial and appeals de novo

If the defendant is found guilty after trial the sentence will constitute a conviction. If a person is found guilty at trial in district court they can appeal de novo (of new) to the Superior Court and the conviction will be erased and the case will essentially start all over again in the Superior Court.

Obviously, the defendants best result is either a dismissal by the prosecution or an acquittal.

A defendant has five days to file an appeal of a guilty finding after trial or appeal a plea agreement that he / she is unhappy with. In the Superior Court appeal, the defendant has a right to a trial by jury. Whereas, in The District Court a person waives their right to a trial by jury but in exchange for their waiver of their right to a trial by jury has the right to appeal any guilty finding de novo (of new) to the Superior Court. A person charged with a misdemeanor essentially has two bites of the apple so to speak. A defendant can attempt to win at a judge decided trial in District Court and then if they lose they can do it all over again with a jury trial in Superior Court.

What is a "filing" in Rhode Island?

If the defendant takes a not guilty plea or a nolo contendere plea then the case will be "filed" for a year. This is commonly called a "filing". If the defendant does not get arrested or get in other trouble and complies with the conditions of the filing during the one year period then the case is dismissed and can be easily expunged from a person's record after the year.

What types of filing are there in Rhode Island

There are two types of filings, not guilty filings and nolo contendere filings. A not Guilty filing is when the defendant maintains his innocence and the case is filed for a year. A not guilty filing is not usually allowed by Judges in the District Court. Not Guilty filings are extremely rare in the District Court. Some judges will not allow not guilty filings as a matter of policy. Not guilty filings are very beneficial to the defendant as the best case scenario short of a dismissal or not guilty finding because if the person is accused of a new crime or violating their filing the state will need to still prove their underlying case.

A nolo contendere filing is when the defendant admits to guilt and the case is filed for a year. The vast majority of filings are nolo contendere filings! A major difference between a not guilty filing and a nolo contendere filing is when a person is violated for a not guilty filing then the state / prosecution must prove guilt at that time. Whereas, if a person is violated for a nolo contendere filing, the judge simply must impose a sentence because the person has already admitted guilt to that offense.

If the person violates his filing by not complying with the conditions of the filing then the persons filing can be revoked by the Court. If a person takes a nolo contendere filing and gets into further trouble, violates the conditions of the filing or is arrested on a new offense then the person will be haled back into court to be sentenced on the filing. (unless the filing was a not guilty filing which means the prosecution must prove the defendants guilt) There are various conditions that can be put on a filing including alcohol and drug counseling, domestic violence counseling or classes, restitution, no contact with the victim and community service.

What implications are there for domestic violence offenses in Rhode Island?

If the underlying charge is for a domestic offense such as domestic assault / domestic vandalism or domestic disorderly conduct then the defendant will be ordered to have no contact with his wife girlfriend or the victim as the case may be. If the defendant violates the no contact order then the defendant will be charged with a separate offense of violating a no contact order as well as violating the conditions of the filing or probation, as a result of the communication.

No Contact Orders in Rhode Island explained

A "no contact order" means that the defendant is precluded from having any contact and or communication with the victim or the person under the protection of the no contact order. This includes but is not limited to letters, emails, text messages or messages delivered through a third party.

In other words if a person is under a no contact order and sees the victim in public they must leave the area immediately and not acknowledge the victims existence. A person cannot even say "hi" if they walk by the victim by chance on the street.

Be very careful! A person can be arrested for violating a no contact order even if the victim initiates the contact and calls the defedant. A person can be charged with breaking a no contact order even if invited by his wife to come back to the marital home.

Even if the victim tells you that the no contact order has been dropped, do not take the victims word for it. You must see the piece of paper signed by the judge dismissing the no contact order before any contact or communication is initiated. A no contact order expires when the sentence period is finished. However, be careful because there may also be a restraining order issued as a reult of a divorce or family court matter or a District Court restraining order.

A person who is on probation or a probation attached to a suspended sentence must be even more vigilante in order to not violate the no contact order. For example, a single phone call made by the defendant to a victim under the protection of a no contact order probably means a minimum of ten 10 days in jail at the ACI. We are not talking about the local town jail but the ACI.

Violation of conditions of filing

Please note, that a person who has a filing can be held for up to ten days at the ACI if arrested for a new charge / crime. A person who is on a filing must be very careful that he / she stays out of troubl.

If the person is violated from the terms and conditions of the filing then hypothetically the filing could become a conviction because that person has already admitted to the charges by pleading nolo contendere and giving up his right to contest the charges. Court costs will be imposed if there is a nolo contendere filing in a criminal case.

Probation in Rhode Island

If a person recieves probation then they will need to abide by the conditions of the probation and agree to keep the peace and be of good behavior. If a person violates his probation by being arrested for a new crime then the person may be held in Jail at the ACI as a probation violater. After ten days a person has the right to a hearing. At the probation violation hearing, the prosecutor must only convince the judge so that the judge is "reasonably satisfied" that the person violated the probation by committing the new offense. Also the person will be prosecuted for the new offense as a separate charge from violating the probation. There is a good chance that if a person is violated for his probation that the probation which was originally not a conviction will now ripen into a conviction.

A probationary period is a time of great risk for a defendant and a defendant must be careful to stay out of trouble!

A person can also be violated for his probation for various infractions that may not be criminal acts but that violate the conditions of probation such as not keeping probation informed of new adresses, leaving the state without permission, not paying court costs or restitution, not properly reporting to the probation officer, etc. When a person is under probation in Rhode Island he or she is essentially is in a contract with the state to keep the peace, be of good behavior and comply with the conditions and rules of probation.

What is a probation with a suspended sentence in Rhode Island?

If the charges are serious or the person has a lengthy criminal record of has already been placed on probation before then in addition to the probation, the judge may attach a suspended sentence. A person who has a suspended sentence is in a period of extreme risk because a new offense could lead to substantial jail time!

A suspended sentence is always a conviction under Rhode Island law. A person with probation and a suspended sentence attached will not spend anytime in prison unless the person violates the conditions of his probation as set forth above.

The period of the suspended sentence is the most time that a person could spend in prison if the person violates the conditions of the probation or commits a new offense. If the person violates the probation, the judge could sentence the person up to the amount of time that is suspended. Please note that the person could get additional sentence and or penalties as a result of the new charge. It is in the defendants best interest to have the period of suspended sentence to be as short as possible. The suspended sentence typically is for the same amount of time as the period of probation.

Please note that if the offense is driving on a suspended license there are special rules that apply that are set forth in the statutes.

Most prosecutors and judges believe that each sentence should be more severe then the last. A person's first minor

offense is likely to lead to only a filing which is the lowest form of penalty in Rhode Island. A person usually will only be allowed one filing.

It is important that this criminal law article be used for informational purposes only and not as a substitute for seeking legal advice from a Rhode Island lawyer.