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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO CRIMINAL OFFENSES -- COMMERCIAL SEXUAL ACTIVITY

Introduced By: Senators Mack, and Murray

Date Introduced: March 28, 2024

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Whereas, the Rhode Island House of Representatives passed House
2 Resolution 5250, creating a “Special Legislative Study Commission Ensuring Racial Equity and
3 Optimizing Health and Safety Laws Affecting Marginalized Individuals” (hereinafter “the
4 Commission”) in 2021.

5 Whereas, this thirteen-member Commission specifically sought to draw from and expand
6 upon the significant research on the health and safety implications of laws related to violence,
7 exploitation, stigma, human trafficking and sexual health; laws that disproportionately impact
8 women, transgender individuals, and people of color.

9 Whereas, members of the Commission met seven times between November 2021 and April
10 2023 and heard testimony from a variety of experts and individuals with lived experience in the sex
11 trade.

12 Whereas, the Commission issued a comprehensive report on August 14, 2023 with
13 numerous findings. The findings below are relevant to this repealer:

14 Finding 6. The ACLU has a long-standing position on the issue of sex work
15 decriminalization and, for over 40 years, has opposed laws criminalizing sexual activity among
16 consenting adults. According to the ACLU, these laws have traditionally represented a direct form
17 of discrimination against women.

18 Finding 7. According to the Erotic Labor Alliance of New England, repressive policies
19 including criminalization of sex work has been associated with increased risk of sexual violence,

1 almost two times increased risk of HIV and other STIs, and disruption of support networks and
2 access to services.

3 Finding 8. According to a study done in 2018 by Lucy Platt entitled “Associations between
4 sex work laws and sex workers’ health: A systematic review and meta-analysis of quantitative and
5 qualitative studies”, the removal of criminal and administrative sanctions for sex work is needed to
6 improve sex workers’ health and access to services and justice.

7 Finding 9. The “New Zealand Model” is a 2003 law passed by New Zealand which aims
8 to uphold the human rights of sex workers and decriminalizes prostitution. Under that model, it is
9 not against the law to work as a sex worker or operate a brothel, nor is it against the law to pay for
10 sexual services. However, it is illegal for any third party to facilitate anyone under the age of
11 eighteen (18) into undertaking sex work.

12 Finding 10. According to COYOTE RI: the main impact of the re-criminalization of indoor
13 prostitution has been the repeated arrests and deportations of Asian spa workers; over the last six
14 (6) years, there has been a sharp increase in arrests of Asian spa workers; and, in 2021, Asian spa
15 workers made up thirteen (13) of Rhode Island's sixteen (16) total prostitution-related arrests.

16 Whereas, this final report also called for numerous recommendations. In relevant part, the
17 report issued the following recommendation:

18 Recommendation 1. Consider a Rhode Island law to restore the pre-2009 landscape, such
19 that private, consensual sexual activity remains out of the reach of criminal laws. Alternatively,
20 consider adopting the New Zealand Model (referenced in the above findings), which decriminalizes
21 prostitution.

22 SECTION 2. Sections 11-34.1-1, 11-34.1-2, 11-34.1-3, 11-34.1-4, 11-34.1-6, 11-34.1-7,
23 11-34.1-8, 11-34.1-9, 11-34.1-10, 11-34.1-11, 11-34.1-12, 11-34.1-13 and 11-34.1-14 of the
24 General Laws in Chapter 11-34.1 entitled "Commercial Sexual Activity" are hereby repealed.

25 **11-34.1-1. Definitions.**

26 ~~The following words and phrases, when used in this chapter, have the following meanings:~~

27 ~~(1) “Sexual conduct” means sexual intercourse, cunnilingus, fellatio, anal intercourse, and~~
28 ~~digital intrusion or intrusion by any object into the genital opening or anal opening of another~~
29 ~~person’s body, or the stimulation by hand of another’s genitals for the purposes of arousing or~~
30 ~~gratifying the sexual desire of either person.~~

31 ~~(2) “Commercial sexual activity” means any sexual conduct which is performed or~~
32 ~~promised in return for a fee.~~

33 ~~(3) “Fee” means any thing of monetary value, including but not limited to money, given as~~
34 ~~consideration for sexual conduct.~~

1 **11-34.1-2. Prostitution.**

2 (a) ~~A person is guilty of prostitution when such person engages, or agrees, or offers to~~
3 ~~engage in sexual conduct with another person in return for a fee. Any person found guilty under~~
4 ~~this section shall be deemed guilty of a misdemeanor and shall be subject to imprisonment for a~~
5 ~~term not exceeding six (6) months, or to a fine of not less than two hundred fifty dollars (\$250) nor~~
6 ~~more than one thousand dollars (\$1,000), or both.~~

7 (b) ~~Any person found guilty of a subsequent offense under this section shall be subject to~~
8 ~~imprisonment for a term of not more than one year, or a fine of not less than five hundred dollars~~
9 ~~(\$500) nor more than one thousand dollars (\$1,000), or both.~~

10 (c) ~~In any prosecution for a violation under this section, it shall be an affirmative defense~~
11 ~~if the accused was forced to commit a commercial sexual activity by:~~

12 (1) ~~Being threatened or subjected to physical harm;~~

13 (2) ~~Being physically restrained or threatened to be physically restrained;~~

14 (3) ~~Being subject to threats of abuse of law or legal process;~~

15 (4) ~~Being subject to destruction, concealment, removal, or confiscation, of any passport or~~
16 ~~other immigration document or any other actual or purported governmental identification~~
17 ~~document; or~~

18 (5) ~~Being subject to intimidation in which the accused's physical well being was perceived~~
19 ~~as threatened.~~

20 **11-34.1-3. Procurement of sexual conduct for a fee.**

21 (a) ~~A person is guilty of procuring or attempting to procure sexual conduct for the payment~~
22 ~~of a fee if they engage or seek to engage in sexual conduct for any type of fee and/or pay or agree~~
23 ~~to pay any type of fee for sexual conduct, regardless of the time, place or location of the~~
24 ~~procurement, attempted procurement, payment, attempted payment or conduct. Any person found~~
25 ~~guilty under this section shall be deemed guilty of a misdemeanor and shall be subject to~~
26 ~~imprisonment for a term not exceeding one year, or to a fine of not less than two hundred fifty~~
27 ~~dollars (\$250) nor more than one thousand dollars (\$1,000), or both.~~

28 (b) ~~Any person found guilty of a subsequent offense under this section shall be subject to~~
29 ~~imprisonment for a term not exceeding one year, or a fine of not less than five hundred dollars~~
30 ~~(\$500) nor more than one thousand dollars (\$1,000), or both.~~

31 **11-34.1-4. Loitering for prostitution.**

32 (a) ~~It shall be unlawful for any person to stand or wander in or near any public highway or~~
33 ~~street, or any public or private place, and attempt to engage passersby in conversation, or stop or~~
34 ~~attempt to stop motor vehicles, for the purpose of prostitution or other commercial sexual activity.~~

1 ~~Any person found guilty of the crime of loitering for prostitution shall be subject to a sentence of~~
2 ~~up to six (6) months incarceration or by a fine of not less than two hundred fifty dollars (\$250) nor~~
3 ~~more than one thousand dollars (\$1,000), or both.~~

4 (b) ~~Any person found guilty of a subsequent offense under this section shall be subject to~~
5 ~~imprisonment for a term not exceeding one year, or a fine of not less than five hundred dollars~~
6 ~~(\$500) nor more than one thousand dollars (\$1,000), or both.~~

7 **11-34.1-6. Soliciting from motor vehicles for indecent purposes — Forfeiture of motor**
8 **vehicle.**

9 (a) ~~It shall be unlawful for any person, while an operator or passenger in a motor vehicle~~
10 ~~to stop, or attempt to stop another vehicle or pedestrian, or to engage or attempt to engage persons~~
11 ~~in another vehicle or pedestrians in conversation, for the purposes of prostitution or other indecent~~
12 ~~act, or to patronize, induce, or otherwise secure another person to commit any commercial sexual~~
13 ~~activity. Any person found guilty under this section shall be subject to a sentence of up to six (6)~~
14 ~~months incarceration or a fine of not less than five hundred dollars (\$500) nor more than one~~
15 ~~thousand dollars (\$1,000), or both.~~

16 (b) ~~Any person found guilty of a subsequent offense under this section shall be subject to~~
17 ~~imprisonment for a term of not more than one year and a fine of not less than seven hundred fifty~~
18 ~~dollars (\$750) nor more than one thousand dollars (\$1,000). No fine imposed under this section~~
19 ~~may be suspended.~~

20 (c) ~~The motor vehicle being unlawfully operated as defined in this chapter by a person~~
21 ~~convicted of a second or subsequent offense of soliciting from a motor vehicle for indecent~~
22 ~~purposes pursuant to this chapter which vehicle is owned by the operator, may be seized by the law~~
23 ~~enforcement agency and forfeited at the discretion of the court. Any funds received from the~~
24 ~~forfeiture shall be deposited in the victim's of crimes indemnity fund (VCIF).~~

25 **11-34.1-7. Pandering or permitting prostitution — Not allowed.**

26 (a) ~~It shall be unlawful for any person, by any promise or threat, by abuse of person, or by~~
27 ~~any other device or scheme, to cause, induce, persuade, or encourage a person to become a~~
28 ~~prostitute or to come into this state or leave this state for the purpose of prostitution. It shall be~~
29 ~~unlawful for any person to receive or give, or agree to receive or give, any money or thing of value~~
30 ~~for procuring or attempting to procure any person to become a prostitute or to come into this state~~
31 ~~or leave this state for the purpose of prostitution.~~

32 (b) ~~It shall be unlawful for any person to knowingly permit, allow, transport, or offer or~~
33 ~~agree to receive any person into any place, structure, house, building, room, or business for the~~
34 ~~purpose of committing any commercial sexual activity, or knowingly permit any person to remain~~

1 ~~in the premises for those purposes, or to, in any way, aid or abet or participate in any of the acts or~~
2 ~~things enumerated in this chapter. Any person, knowing a person to be a prostitute, who shall live~~
3 ~~or derive support or maintenance, in whole or in part, from the earnings or proceeds of commercial~~
4 ~~sexual activity, from moneys loaned, advanced to, or charged against the prostitute by a landlord,~~
5 ~~manager, owner of a spa or business, or any other place where commercial sexual activity is~~
6 ~~practiced or allowed, or who shall share in the earnings, proceeds, or moneys shall be guilty of the~~
7 ~~crime of permitting prostitution.~~

8 ~~(e) Every person who commits any of the offenses described in subsection (a) of this~~
9 ~~section, or who assists, abets, or aids another to commit any of those offenses, shall be guilty of~~
10 ~~pandering. For the first offense, that person shall be punished by imprisonment for not less than~~
11 ~~one year and not more than five (5) years and a fine of not less than two thousand dollars (\$2,000),~~
12 ~~nor more than five thousand dollars (\$5,000). For every subsequent offense, that person shall be~~
13 ~~punished by imprisonment for not less than three (3) years and not more than ten (10) years and a~~
14 ~~fine of not less than five thousand dollars (\$5,000), nor more than ten thousand dollars (\$10,000).~~

15 ~~(d) Any proceeds derived directly from a violation of this section are subject to seizure and~~
16 ~~forfeiture and further proceedings shall be required for their forfeiture as is prescribed by law in~~
17 ~~chapter 21 of title 12.~~

18 **11-34.1-8. Venue of pandering or permitting prostitution prosecutions.**

19 ~~It shall not be a defense to any prosecution of any of the offenses described in this chapter~~
20 ~~that the offense or any part of the offense shall have been committed outside the state, and any~~
21 ~~offense described in this chapter may be alleged to have been committed. The offender may be~~
22 ~~prosecuted and punished in any county in which the offender or the person upon or against whom~~
23 ~~the offense was committed may be found, or in which the offense was consummated, or in which~~
24 ~~any overt acts in furtherance of the offenses shall have been committed.~~

25 **11-34.1-9. Spouse as witness in pandering or permitting prostitution.**

26 ~~In any prosecution for any offense under this chapter, any person shall be a competent~~
27 ~~witness against the offender in relation to any offense committed by the offender upon or against~~
28 ~~him or her, or by the offender against or upon another person or persons in his or her presence,~~
29 ~~notwithstanding that person may have been married to the offender before or after the commission~~
30 ~~of the offense, and notwithstanding that person may be called as witness during the existence of~~
31 ~~the marriage or after its dissolution.~~

32 **11-34.1-10. Reputation testimony as evidence.**

33 ~~In the trial of any person charged with a violation of this chapter, testimony concerning the~~
34 ~~reputation of the place where the violation occurred or of persons who frequent or reside in it shall~~

1 ~~be admissible in evidence in support of the charge.~~

2 ~~**11-34.1-11. Examination and treatment for venereal disease.**~~

3 ~~Any person convicted for any violation of this chapter or of any other statute relating to~~
4 ~~lewd or lascivious behavior or unlawful sexual intercourse, and who shall be confined or~~
5 ~~imprisoned in any correctional institution for more than ten (10) days, may be examined by the~~
6 ~~department of health for venereal disease, through duly appointed, licensed physicians as agents.~~
7 ~~Any person that is examined may be detained until the result of the examination is duly reported.~~
8 ~~If found with venereal disease in an infectious stage, the person shall be treated, and if a menace to~~
9 ~~the public, quarantined, in accordance with rules and regulations, not inconsistent with law, of the~~
10 ~~director of health, who is authorized to formulate and issue them. Refusal to comply with or obey~~
11 ~~the rules or regulations shall constitute a misdemeanor and be punishable by fine not to exceed two~~
12 ~~hundred fifty dollars (\$250), or a sentence of incarceration of up to three (3) months, or both.~~

13 ~~**11-34.1-12. Human Immunodeficiency Virus (HIV).**~~

14 ~~(a) Any person convicted of a violation of any provisions of this chapter shall be required~~
15 ~~to be tested for Human Immunodeficiency Virus (HIV). No consent for the testing shall be required.~~

16 ~~(b) The department of health shall maintain sites for providing both anonymous and~~
17 ~~confidential HIV testing, and HIV counseling and referral. Each site, funded by the department of~~
18 ~~health, shall offer free testing, counseling and referral for indigent parties and other individuals~~
19 ~~without health insurance, offer a sliding scale for payment for all other individuals and, in the case~~
20 ~~of confidential testing, screen for ability to pay through a third party insurer. In the case of~~
21 ~~nonfunded sites for HIV testing, organizations and/or institutions performing the test shall offer~~
22 ~~free testing, counseling and referral for indigent parties and other individuals without health~~
23 ~~insurance.~~

24 ~~(c) All persons tested under this section shall be provided pre-test and post-test counseling~~
25 ~~by individuals trained by the department of health, as an HIV testing counselor, in accordance with~~
26 ~~regulations promulgated by the department of health; provided, that the counseling shall be in~~
27 ~~accordance with acceptable medical standards.~~

28 ~~(d) All persons who are tested under this section, who are determined to be injecting drug~~
29 ~~users, shall be referred to appropriate sources of substance abuse treatment by the HIV testing~~
30 ~~counselor and/or the attending practitioner as follows:~~

31 ~~(1) Those persons who test positive for HIV infection shall be given priority for those~~
32 ~~outpatient substance abuse treatment programs that are sponsored or supported by the appropriate~~
33 ~~state agency responsible for these services.~~

34 ~~(2) Those persons who are injecting drug users and test negative for HIV infection shall be~~

1 referred, by the HIV testing counselor and/or attending practitioner, to the appropriate state agency
2 responsible for these services for earliest possible evaluation and treatment.

3 **11-34.1-13. Reporting.**

4 On or before January 15, 2010, and semi-annually thereafter, each law enforcement agency
5 in this state shall file with the Governor, the Attorney General, the Speaker of the House of
6 Representatives and the President of the Senate a report concerning the agency's enforcement of
7 this chapter during the preceding six (6) month period. Each semi-annual report shall contain, but
8 need not be limited to, the following information:

9 (1) The number of persons arrested pursuant to subsection 11-34.1-2(a), subsection 11-
10 34.1-2(b), § 11-34.1-3, § 11-34.1-4, subsection 11-34.1-6(a), subsection 11-34.1-6(b) and
11 subsection 11-34.1-7 of this chapter;

12 (2) Of those arrested, the number of persons convicted, placed on probation, whose case is
13 filed pursuant to § 12-10-12, whether those persons pled guilty or nolo contendere or were found
14 guilty after trial by judge or jury;

15 (3) The fines and/or sentences of those persons identified pursuant to subdivision (2) of
16 this section; and

17 (4) A summary of the amounts of fines levied and the lengths of sentences identified
18 pursuant to subdivision (3) of this section.

19 **11-34.1-14. Severability.**

20 If any provision of this chapter or its application to any person or circumstances is held
21 invalid, the invalidity shall not affect other provisions or applications of the chapter which can be
22 given effect without the invalid provision or application, and to this end the provisions of this
23 chapter are declared to be severable.

24 SECTION 3. Sections 11-34-8.3 and 11-34-11 of the General Laws in Chapter 11-34
25 entitled "Prostitution and Lewdness" are hereby repealed.

26 **11-34-8.3. Criminal forfeiture procedures.**

27 (a) Any criminal complaint charging an offense under §§ 11-34-8.1 or 11-34-8.2 shall set
28 forth with reasonable particularity:

29 (1) Whether the law enforcement agency seeks to have forfeited property pursuant to this
30 section; and

31 (2) What property the law enforcement agency seeks to have forfeited.

32 (b) The court may, upon application of the law enforcement agency, enter a restraining
33 order or injunction, require any person claiming any interest in the subject motor vehicle to execute
34 a satisfactory performance bond to the state, or take any other action to preserve the availability of

1 ~~the motor vehicle subject to forfeiture described in § 11-34-8.2 whether prior to or subsequent to~~
2 ~~the filing of a complaint. Written notice and an opportunity for a hearing shall be afforded to~~
3 ~~persons appearing to have an interest in the motor vehicle. The hearing is limited to the issues of~~
4 ~~whether:~~

5 ~~(1) There is a substantial probability that the law enforcement agency will prevail on the~~
6 ~~issue of forfeiture and that failure to enter the order will result in the motor vehicle being destroyed,~~
7 ~~conveyed, encumbered or further encumbered, removed from the jurisdiction of the court, or~~
8 ~~otherwise made unavailable for forfeitures; and~~

9 ~~(2) The need to preserve the availability of property through the entry of the requested~~
10 ~~order outweighs the hardship on any party against whom the order is to be entered.~~

11 ~~(e)(1) An order under this section may be entered upon application of the law enforcement~~
12 ~~agency without notice or opportunity for a hearing when a complaint has not yet been filed with~~
13 ~~respect to the property if the law enforcement agency demonstrates that there is probable cause to~~
14 ~~believe that the property with respect to which the order is sought would, in the event of conviction,~~
15 ~~be subject to forfeiture under § 11-34-8.2 and that provision of notice will jeopardize the availability~~
16 ~~of the motor vehicle for forfeiture. The order shall expire within ten (10) days of the date on which~~
17 ~~it is entered unless for good cause shown or unless the party against whom it is entered consents to~~
18 ~~an extension for a longer period.~~

19 ~~(2) A hearing requested by any party in interest concerning an order entered under this~~
20 ~~subsection shall be held at the earliest possible time and prior to the expiration of the temporary~~
21 ~~order.~~

22 ~~(3) The court may receive and consider, at the hearing held pursuant to this subsection,~~
23 ~~evidence and information that would be inadmissible in court.~~

24 ~~(d) Upon conviction of a person for an offense under § 11-34-8.1, the court may enter a~~
25 ~~judgment of forfeiture of the property described in §§ 11-34-8.2 and 11-34-8.3 to the city or town~~
26 ~~and shall also authorize the law enforcement agency to seize the motor vehicle ordered forfeited~~
27 ~~upon any terms and conditions that the court shall deem proper. Following the entry of an order~~
28 ~~declaring the property forfeited, the court may, upon application of the law enforcement agency,~~
29 ~~enter any appropriate orders, require the execution of satisfactory performance bonds, appoint~~
30 ~~receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the~~
31 ~~interest of the law enforcement agency in the motor vehicle ordered forfeited.~~

32 ~~(e) All right, title, and interest in the motor vehicle described in § 11-34-8.1 vests in the~~
33 ~~city or town upon the commission of the act giving rise to forfeiture under this section subject to~~
34 ~~the limitations of § 11-34-8.2. Any such motor vehicle that is subsequently transferred to any person~~

1 ~~may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the~~
2 ~~state, unless the transferee establishes in a hearing that he or she is a bona fide purchaser for value~~
3 ~~of the motor vehicle who at the time of purchase was reasonably without cause to believe that the~~
4 ~~motor vehicle was subject for forfeiture.~~

5 **11-34-11. Loitering for indecent purposes in or near schools.**

6 ~~Any person who violates this section by attempting to engage a person for the purpose of~~
7 ~~prostitution or other indecent act, or to patronize or induce or otherwise secure a person to commit~~
8 ~~any indecent act in the building or on the grounds or within three hundred (300) yards of the grounds~~
9 ~~of a public or private elementary, vocational, or secondary school, shall be punished by a term of~~
10 ~~imprisonment of not more than one year and a fine of not less than five hundred dollars (\$500) nor~~
11 ~~more than one thousand dollars (\$1,000).~~

12 SECTION 4. Section 11-34.1-5 of the General Laws in Chapter 11-34.1 entitled
13 "Commercial Sexual Activity" is hereby amended to read as follows:

14 **11-34.1-5. Expungement of certain criminal records.**

15 ~~(a)~~ Records defined in § 12-1.3-1 of any person convicted, placed on probation, or whose
16 case was filed pursuant to § 12-10-12, for a violation of §§ 11-34.1-2, 11-34.1-3, ~~or § 11-34.1-4,~~
17 11-34.1-6 or 11-34-11 shall ~~may~~ be expunged at no cost upon petition of the person one year after
18 completion of that person's sentence.

19 ~~(b) The motion shall be filed in accordance with a chapter 12-1.3 and may be granted in~~
20 ~~the court's discretion regardless of the person's first offender status.~~

21 SECTION 5. Section 7-14-2 of the General Laws in Chapter 7-14 entitled "Suppression of
22 Criminally Operated Businesses" is hereby amended to read as follows:

23 **7-14-2. Enjoining operations of a business.**

24 The attorney general is authorized to institute civil proceedings in the superior court to
25 enjoin the operation of any business other than a corporation, including a partnership, limited
26 partnership, unincorporated association, joint venture, or sole proprietorship, when:

27 (1) Any person in control of the business, who may be a partner in a partnership, a
28 participant in a joint venture, the owner of a sole proprietorship, an employee or agent of the
29 business, or a person who, in fact, exercises control over the operations of the business, has, in
30 conducting its business affairs, purposely engaged in a persistent course of gambling, unlawful
31 traffic in narcotics, extortion, embezzlement, intimidation, bribery, ~~prostitution,~~ human trafficking,
32 crimes against nature, or other illegal conduct with the intent to compel or induce other persons,
33 firms, or corporations to deal with the business or engage in any illegal conduct; and

34 (2) That for the prevention of future illegal conduct of the same character, the public

1 interest requires the operation of the business to be enjoined.

2 SECTION 6. Section 7-15-1 of the General Laws in Chapter 7-15 entitled "Racketeer
3 Influenced and Corrupt Organizations" is hereby amended to read as follows:

4 **7-15-1. Definitions.**

5 (a) "Enterprise" includes any sole proprietorship, partnership, corporation, association, or
6 other legal entity, and any union or group of individuals associated for a particular purpose although
7 not a legal entity.

8 (b) "Person" includes any individual or entity capable of holding a legal or beneficial
9 interest in property.

10 (c) "Racketeering activity" means any act or threat involving murder, kidnapping,
11 gambling, arson in the first, second, or third degree, robbery, bribery, extortion, larceny, human
12 trafficking or prostitution, or any dealing in narcotic or dangerous drugs that is chargeable as a
13 crime under state law and punishable by imprisonment for more than one year, or child
14 exploitations for commercial or immoral purposes in violation of § 11-9-1(b) or (c) or § 11-9-1.1.

15 (d) "Unlawful debt" means a debt incurred or contracted in an illegal gambling activity or
16 business or that is unenforceable under state law in whole or in part as to principal or interest
17 because of the law relating to usury.

18 SECTION 7. Section 9-17-13 of the General Laws in Chapter 9-17 entitled "Witnesses" is
19 hereby amended to read as follows:

20 **9-17-13. Spouses of parties.**

21 In the trial of every civil cause, the husband or wife of either party shall be deemed a
22 competent witness; provided, that neither shall be permitted to give any testimony tending to
23 criminate the other or to disclose any communication made to him or her, by the other, during their
24 marriage, except on trials of petitions for divorce between them, and trials between them involving
25 their respective property rights, ~~and under the provisions of § 11-34.1-9.~~

26 SECTION 8. Section 10-1-5 of the General Laws in Chapter 10-1 entitled "Abatement of
27 Nuisances" is hereby repealed.

28 ~~**10-1-5. Evidence of reputation — Conviction of offenses against decency.**~~

29 ~~In any hearing in proceedings under this chapter, evidence of the general reputation of the~~
30 ~~place, or the conviction, whether by trial or plea, including a plea of nolo, of any person of the~~
31 ~~violation of statutes against prostitution, lewdness, or assignation committed in any such place shall~~
32 ~~be admissible for the purposes of proving the existence of the nuisance.~~

33 SECTION 9. Sections 11-30-1 and 11-30-8 of the General Laws in Chapter 11-30 entitled
34 "Nuisances" are hereby amended to read as follows:

1 **11-30-1. Definitions.**

2 For the purpose of this chapter and chapter 1 of title 10, the terms “nuisance or common
3 nuisance”, “person”, or “place” are defined as follows:

4 (1) “Nuisance” or “common nuisance” means and includes ~~any place as defined in this~~
5 ~~section in or upon which lewdness, assignation, or prostitution is conducted, permitted, continued,~~
6 ~~or exists, and the personal property used in conducting or maintaining any place for that purpose,~~
7 ~~and~~ all buildings, places, or tenements used as houses of ill fame, for illegal gaming, or where
8 intemperate, idle, dissolute, noisy, or disorderly persons are in the habit of resorting;

9 (2) “Person” includes any individual, corporation, association, partnership, trustee, lessee,
10 agent, or assignee; and

11 (3) “Place” includes any building, structure, or tenement, or any separate part or portion of
12 a building or structure, or the ground itself.

13 **11-30-8. Entry by police officers of premises — Commanding departure of persons**
14 **found.**

15 The sheriffs of the several counties and their deputies, and the town sergeants, constables,
16 and chiefs of police of the several towns and cities may, within their respective towns and counties,
17 enter any house or building that they have cause to suspect ~~to be inhabited for purposes of~~
18 ~~prostitution and lewdness,~~ to be resorted to by persons of ill fame or by persons of dissolute, idle,
19 or disorderly character, or in which they have reasonable cause to believe intoxicating liquors are
20 sold in violation of law, or unlawful games are carried on or permitted, or in which they have
21 reasonable cause to believe a common nuisance is kept or maintained. Upon entering the house or
22 building, they may command all persons assembled there to immediately depart from the house or
23 building. In the event of the neglect or refusal of any person so commanded to leave, they may
24 arrest that person and hold him or her for a period not exceeding twenty-four (24) hours for
25 prosecution. Every person who shall so refuse or neglect shall be deemed guilty of a misdemeanor
26 and shall be fined not exceeding twenty dollars (\$20.00) or be imprisoned not exceeding thirty (30)
27 days.

28 SECTION 10. Sections 11-67.1-15 and 11-67.1-16 of the General Laws in Chapter 11-67.1
29 entitled "Uniform Act on Prevention of and Remedies for Human Trafficking" are hereby repealed.

30 ~~**11-67.1-15. Immunity of minor.**~~

31 ~~(a) An individual is not criminally liable or subject to a delinquency proceeding in the~~
32 ~~family court for prostitution or solicitation to commit a sexual act if the individual was a minor at~~
33 ~~the time of the offense and committed the offense as a direct result of being a victim.~~

34 ~~(b) An individual who has engaged in commercial sexual activity is not criminally liable~~

1 ~~or subject to a delinquency proceeding in the family court for prostitution or solicitation to commit~~
2 ~~a sexual act if the individual was a minor at the time of the offense.~~

3 ~~(c) A minor who under subsection (a) or (b) of this section is not subject to criminal liability~~
4 ~~or a delinquency proceeding in family court is presumed to be an abused and/or neglected child as~~
5 ~~defined in § 40-11-2.~~

6 ~~(d) This section does not apply in a prosecution or a delinquency proceeding for patronizing~~
7 ~~a prostitute.~~

8 ~~**11-67.1-16. Affirmative defense of victim.**~~

9 ~~An individual charged with prostitution or solicitation to commit a sexual act, committed~~
10 ~~as a direct result of being a victim, may assert an affirmative defense that the individual is a victim.~~

11 SECTION 11. Sections 23-6.3-1 and 23-6.3-4 of the General Laws in Chapter 23-6.3
12 entitled "Prevention and Suppression of Contagious Diseases — HIV/AIDS" are hereby amended
13 to read as follows:

14 ~~**23-6.3-1. Purpose.**~~

15 The purpose of this chapter is to reduce vulnerability to HIV/AIDS transmission, protect
16 persons who are infected with HIV from discrimination, ensure informed consent for testing, and
17 to provide consistent terms and standards within this title and as applicable to ~~chapters 34.1 and 37~~
18 ~~of title 11~~, chapter 28 of title 21, and chapter 24 of title 40.1.

19 ~~**23-6.3-4. Exceptions to consent requirements.**~~

20 (a) A healthcare provider may test for the presence of HIV without obtaining consent from
21 the individual to be tested under the following conditions:

22 (1) When the individual to be tested is under one year of age;

23 (2) When a child between one and thirteen (13) years of age appears to be symptomatic for
24 HIV;

25 (3) When the individual to be tested is a minor under the care and authority of the
26 department of children, youth and families, and the director of that department certifies that an HIV
27 test is necessary to secure health or human services for that individual;

28 (4) In a licensed healthcare facility or healthcare setting, in the event that an occupational
29 health representative or physician, registered nurse practitioner, physician assistant, or nurse-
30 midwife, not directly involved in the exposure, determines that an employee or emergency service
31 worker, other than one in a supervisory position to the person making the determination, had a
32 significant exposure to the blood and/or body fluids of a patient and the patient or the patient's
33 guardian refuses to grant consent for an HIV test to determine whether the patient has HIV, then,
34 if a sample of the patient's blood is available, that blood shall be tested for HIV.

1 (i) If a sample of the patient's blood is not otherwise available and the patient refuses to
2 grant consent to draw blood, the employee or emergency service worker may petition the superior
3 court for a court order mandating that the test be performed.

4 (ii) Before a patient or a sample of the patient's blood is required to undergo an HIV test,
5 the employee or emergency service worker must submit to a baseline HIV test within seventy-two
6 (72) hours of the exposure.

7 (iii) No person who determines that an employee or emergency service worker has
8 sustained a significant exposure and authorizes the HIV testing of a patient, nor any person or
9 healthcare facility who acts in good faith and recommends the test be performed, shall have any
10 liability as a result of their actions carried out under this chapter, unless those persons are proven
11 to have acted in bad faith.

12 (iv) For the purposes of this section, "emergency service worker" means a worker
13 responding on behalf of a licensed ambulance/rescue service, or a fire department or a law
14 enforcement agency, who, in the course of his/her professional duties, has been exposed to bodily
15 fluids in circumstances that present a significant risk of transmission of HIV, and has completed a
16 pre-hospital exposure form in accordance with § 23-4.1-19.

17 (5) In an emergency, where due to a grave medical or psychiatric condition, and it is
18 impossible to obtain consent from the patient or, if applicable under state law, the patient's parent,
19 guardian, or agent.

20 (6) As permitted under § 23-1-38 entitled "HIV Antibody Testing-Sperm Collection or
21 Donation."

22 (7) ~~Any individual convicted of a violation of any provisions of chapter 34.1 of title 11~~
23 ~~entitled "Commercial Sexual Activity," shall be required to be tested for HIV unless already~~
24 ~~documented HIV positive. All individuals tested under this section shall be informed of their test~~
25 ~~results. All individuals tested under this section who are determined to be injecting and/or intra-~~
26 ~~nasal drug users shall be referred to appropriate substance abuse treatment as outlined in § 23-6.3-~~
27 ~~3(e).~~

28 (8) Any individual convicted of possession of any controlled substance as defined in
29 chapter 28 of title 21 entitled "Uniform Controlled Substances Act," that has been administered
30 with a hypodermic instrument, retractable hypodermic syringe, needle, intra-nasally, or any similar
31 instrument adapted for the administration of drugs shall be required to be tested for HIV unless
32 already documented HIV positive.

33 (9) All individuals tested under this section shall be informed of their test results.

34 (10) In accordance with the provisions of chapter 37 of title 11, entitled, "Sexual Assault,"

1 any individual who has admitted to or been convicted of or adjudicated wayward or delinquent by
2 reason of having committed any sexual offense involving penetration whether or not a sentence or
3 fine is imposed or probation granted, shall be ordered by the court upon petition of the victim,
4 immediate family members of the victim or legal guardian of the victim, to submit to a blood test
5 for the presence of a sexually transmitted disease including, but not limited to, HIV. All individuals
6 tested under this section shall be informed of their test results.

7 (11) In accordance with the provisions of § 42-56-37, entitled "HIV Testing," every
8 individual who is committed to the adult correctional institutions to any criminal offense, after
9 conviction, is required to be tested for HIV.

10 (b) It is unlawful for any person to disclose to a third party the results of an individual's
11 HIV test without the prior written consent of that individual, except in accordance with § 23-6.3-7.

12 SECTION 12. Section 40-11-2 of the General Laws in Chapter 40-11 entitled "Abused and
13 Neglected Children" is hereby amended to read as follows:

14 **40-11-2. Definitions.**

15 When used in this chapter and unless the specific context indicates otherwise:

16 (1) "Abused or neglected child" means a child whose physical or mental health or welfare
17 is harmed, or threatened with harm, when his or her parent or other person responsible for his or
18 her welfare:

19 (i) Inflicts, or allows to be inflicted, upon the child physical or mental injury, including
20 excessive corporal punishment; or

21 (ii) Creates, or allows to be created, a substantial risk of physical or mental injury to the
22 child, including excessive corporal punishment; or

23 (iii) Commits, or allows to be committed, against the child an act of sexual abuse; or

24 (iv) Fails to supply the child with adequate food, clothing, shelter, or medical care, though
25 financially able to do so or offered financial or other reasonable means to do so; or

26 (v) Fails to provide the child with a minimum degree of care or proper supervision or
27 guardianship because of his or her unwillingness or inability to do so by situations or conditions
28 such as, but not limited to: social problems, mental incompetency, or the use of a drug, drugs, or
29 alcohol to the extent that the parent or other person responsible for the child's welfare loses his or
30 her ability or is unwilling to properly care for the child; or

31 (vi) Abandons or deserts the child; or

32 (vii) Subjects or allows the child to be subjected to any of the human trafficking offenses

33 in §§ 11-67.1-3, 11-67.1-4, 11-67.1-5, 11-67.1-6, or 11-67.1-7 ~~Sexually exploits the child in that~~
34 ~~the person allows, permits, or encourages the child to engage in prostitution as defined by the~~

1 ~~provisions in § 11-34.1-1 et seq., entitled “Commercial Sexual Activity”;~~ or

2 (viii) Sexually exploits the child in that the person allows, permits, encourages, or engages
3 in the obscene or pornographic photographing, filming, or depiction of the child in a setting that,
4 taken as a whole, suggests to the average person that the child is about to engage in, or has engaged
5 in, any sexual act, or that depicts any such child under eighteen (18) years of age performing
6 sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or

7 (ix) Commits, or allows to be committed, any sexual offense against the child as sexual
8 offenses are defined by the provisions of chapter 37 of title 11, entitled “Sexual Assault,” as
9 amended; or

10 (x) Commits, or allows to be committed, against any child an act involving sexual
11 penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen
12 (15) years or older, and (1) Force or coercion is used by the perpetrator, or (2) The perpetrator
13 knows, or has reason to know, that the victim is a severely impaired person as defined by the
14 provisions of § 11-5-11, or physically helpless as defined by the provisions of § 11-37-1(6).

15 (2) “Child” means a person under the age of eighteen (18).

16 (3) “Child protective investigator” means an employee of the department charged with
17 responsibility for investigating complaints and referrals of child abuse and neglect and institutional
18 child abuse and neglect.

19 (4) “Children’s advocacy center (CAC)” means a community-based organization that is a
20 member of the Rhode Island chapter of children advocacy centers and an accredited member (or
21 working toward accreditation) of the National Children’s Alliance.

22 (5) “Department” means department of children, youth and families.

23 (6) “Educational program” means any public or private school, including boarding schools,
24 or any home-schooling program.

25 (7) “Healthcare provider” means any provider of healthcare services involved in the
26 delivery or care of infants or care of children.

27 (8) “Institution” means any private or public hospital or other facility providing medical or
28 psychiatric diagnosis, treatment, and care.

29 (9) “Institutional child abuse and neglect” means situations of known or suspected child
30 abuse or neglect where the person allegedly responsible for the abuse or neglect is a foster parent
31 or the employee of a public or private residential childcare institution or agency; or any staff person
32 providing out-of-home care or situations where the suspected abuse or neglect occurs as a result of
33 the institution’s practices, policies, or conditions.

34 (10) “Law enforcement agency” means the police department in any city or town or the

1 state police.

2 (11) "Mental injury" includes a state of substantially diminished psychological or
3 intellectual functioning in relation to, but not limited to, such factors as: failure to thrive; ability to
4 think or reason; control of aggressive or self-destructive impulses; acting-out or misbehavior,
5 including incorrigibility, ungovernability, or habitual truancy; provided, however, that the injury
6 must be clearly attributable to the unwillingness or inability of the parent or other person
7 responsible for the child's welfare to exercise a minimum degree of care toward the child.

8 (12) "Person responsible for child's welfare" means the child's parent; guardian; any
9 individual, eighteen (18) years of age or older, who resides in the home of a parent or guardian and
10 has unsupervised access to a child; foster parent; an employee of a public or private residential
11 home or facility; or any staff person providing out-of-home care (out-of-home care means child
12 day care to include family day care, group day care, and center-based day care). Provided, further,
13 that an individual, eighteen (18) years of age or older, who resides in the home of a parent or
14 guardian and has unsupervised access to the child, shall not have the right to consent to the removal
15 and examination of the child for the purposes of § 40-11-6.

16 (13) "Physician" means any licensed doctor of medicine, licensed osteopathic physician,
17 and any physician, intern, or resident of an institution as defined in subsection (8).

18 (14) "Probable cause" means facts and circumstances based upon as accurate and reliable
19 information as possible that would justify a reasonable person to suspect that a child is abused or
20 neglected. The facts and circumstances may include evidence of an injury, or injuries, and the
21 statements of a person worthy of belief, even if there is no present evidence of injury.

22 (15) "Shaken-baby syndrome" means a form of abusive head trauma, characterized by a
23 constellation of symptoms caused by other than accidental traumatic injury resulting from the
24 violent shaking of or impact upon an infant or young child's head.

25 SECTION 13. Section 42-56-20.3 of the General Laws in Chapter 42-56 entitled
26 "Corrections Department" is hereby amended to read as follows:

27 **42-56-20.3. Community correctional program for women offenders.**

28 (a) Program established. In addition to the provisions of § 42-56-20.2, there shall be
29 established within the department of corrections a community correctional program for women
30 offenders. Notwithstanding any provision to the contrary, the department of corrections may
31 contract with private agencies to carry out the provisions of this section. The civil liability of these
32 agencies and their employees, acting within the scope of their employment, and carrying out the
33 provisions of this section, shall be limited in the same manner and dollar amount as if they were
34 agencies or employees of the state.

1 (b) Persons subject to this section. Every person who is either sentenced to imprisonment
2 in the women's division of the adult correctional institutions for a term of two (2) years or less or
3 awaiting trial at the women's division of the adult correctional institutions shall be eligible to serve
4 in the community confinement program for women offenders under the provisions of this section.

5 (c) Terms of community correctional program.

6 (1) The director, or his or her designee, shall refer persons eligible to serve in the
7 community correctional program to the program director of the community correctional program.
8 The program director shall be responsible for developing with each person an individualized plan,
9 which shall be designed toward providing her an opportunity for rehabilitation and restitution. Each
10 plan shall assess the need for, and provide for, employment, vocational or academic education,
11 housing, restitution, community service, or any other social service or counseling need appropriate
12 to the particular woman. Each plan shall be submitted to the director of the department of
13 corrections, or his or her designee, for approval.

14 (2) Upon approval by the director, or his or her designee, of the plan, the plan shall be
15 submitted to the sentencing judge for his or her approval. Upon the court's approval, the person
16 shall be released from the adult correctional institutions for participation in the community
17 correctional program. The supervision of persons so released shall be conducted by the director, or
18 his or her designee. The director, or his or her designee, shall have the full power and authority set
19 forth in § 42-56-20.2.

20 (d) Violations. Any person serving in the community correctional program who is found
21 to be a violator of any of the terms and conditions imposed upon her according to her plan, this
22 section or any rules, regulations, or restrictions issued pursuant hereto shall serve the balance of
23 her sentence in a classification deemed appropriate by the director.

24 ~~(e) Costs.~~

25 ~~(1) Assessment of additional penalty for prostitution related offenses. There shall be~~
26 ~~assessed as a penalty, in addition to those provided by law, against all defendants charged under §~~
27 ~~11-34.1-1 et seq., who plead nolo contendere or guilty, or who are found guilty of the commission~~
28 ~~of those crimes as follows:~~

29 ~~(i) Where the offense charged is a felony, the assessment shall be in the amount of five~~
30 ~~hundred dollars (\$500), or ten percent (10%) of any fine imposed on the defendant by the court,~~
31 ~~whichever is greater;~~

32 ~~(ii) Where the offense charged is a misdemeanor, the assessment shall be in the amount of~~
33 ~~three hundred and fifty dollars (\$350), or ten percent (10%) of any fine imposed on the defendant~~
34 ~~by the court, whichever is greater;~~

1 ~~(iii) Costs shall be assessed whether or not the defendant is sentenced to prison.~~

2 ~~(2) When there are multiple counts or multiple charges to be disposed of simultaneously,~~
3 ~~the judge may, in his or her discretion, suspend the obligation of the defendant to pay on more than~~
4 ~~three (3) counts or charges.~~

5 ~~(3) The assessment shall be deposited as general revenues.~~

6 SECTION 14. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CRIMINAL OFFENSES -- COMMERCIAL SEXUAL ACTIVITY

- 1 This act would decriminalize certain commercial sexual activity.
- 2 This act would take effect upon passage.

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LC004487
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