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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- SAFE HARBOR FOR SEXUALLY
EXPLOITED CHILDREN

Introduced By: Representatives Ackerman, Amore, Fogarty, McNamara, and Messier

Date Introduced: May 06, 2016

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 12-25-20 of the General Laws in Chapter 12-25 entitled "Criminal
2 Injuries Compensation" is hereby amended to read as follows:

3 **12-25-20. Offenses to which chapter applies. --** The office may award compensation in
4 accordance with the provisions of this chapter for personal injury or death which resulted from
5 offenses in the following categories:

- 6 (1) Assault with intent to commit murder, robbery, or rape;
- 7 (2) Assault with a dangerous weapon;
- 8 (3) Assault and battery;
- 9 (4) Mayhem;
- 10 (5) Indecent assault and battery on a child under thirteen (13) years of age;
- 11 (6) Arson or statutory burning;
- 12 (7) Kidnapping;
- 13 (8) Robbery or larceny from that person;
- 14 (9) Murder;
- 15 (10) Manslaughter;
- 16 (11) First or second degree sexual assault;
- 17 (12) Child molestation, first or second degree;
- 18 (13) The abominable and detestable crime against nature or assault with intent to commit

- 1 the abominable and detestable crime against nature;
- 2 (14) Driving under the influence of alcohol or drugs;
- 3 (15) Refusal by a driver to submit to a chemical test for alcohol or drugs in the
4 immediate aftermath of a collision;
- 5 (16) Driving so as to endanger, resulting in death, pursuant to § 31-27-1;
- 6 (17) Driving so as to endanger, resulting in personal injury, pursuant to § 31-27-1.1;
- 7 (18) Any other crime excluding motor vehicle offenses other than those enumerated in
8 this section which results in personal injury or death; ~~and~~
- 9 (19) Failure to stop by a driver in circumstances which result in the death of any person,
10 pursuant to § 31-26-1; ~~;~~ and
- 11 (20) Sex trafficking of a minor pursuant to §11-67-6.

12 SECTION 2. TITLE 14 of the General Laws entitled "Delinquent and Dependent
13 Children" is hereby amended by adding thereto the following chapter:

14 CHAPTER 14-1.1

15 THE RHODE ISLAND SAFE HARBOR FOR

16 SEXUALLY EXPLOITED CHILDREN ACT

17 **14-1.1-1. Short Title.** -- This act shall be known and may be designated as "The Rhode
18 Island Safe Harbor for Sexually Exploited Children Act".

19 **14-1.1-2. Purposes.** -- This act shall be construed so as to effectuate the following
20 purposes:

21 (1) To ensure that minors who are victims of sex trafficking are treated as victims and not
22 criminals by providing for immunity to the child victim from prosecution for prostitution and
23 redirecting the child victim of sexual exploitation and sex trafficking away from the criminal or
24 juvenile justice systems and to refer the child victim to supportive services and programs;

25 (2) To preserve the unity of the family whenever possible and to provide for the care,
26 protection, and treatment of minors coming within the provisions of this act; and

27 (3) To provide child victims of sex trafficking and sexual exploitation access to the
28 criminal injuries compensation fund.

29 **14-1.1-3. Definitions.** -- The following words and phrases when used in this chapter
30 shall, unless the context otherwise requires, be construed as follows:

31 (1) "Child or minor" means a person under the age of eighteen (18).

32 (2) "Child or minor victim of sex trafficking or sexual exploitation" means a minor as
33 defined in this chapter who has been recruited, employed, enticed, solicited, isolated, harbored,
34 transported, provided, persuaded, obtained, induced or maintained by force, fraud or coercion for

1 the purposes of performing commercial sex acts.

2 (3) "Commercial sex act" means any sex act or sexually explicit performance on account
3 of which anything of value is given, promised to, or received, directly or indirectly, by any
4 person.

5 (4) "Criminal injuries compensation fund" means the financial compensation fund for
6 victims of violent crime enumerated in chapter 25 of title 12 and administered by the department
7 of the general treasurer.

8 (5) "Sex act" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or digital
9 intrusion or intrusion by any object into the genital opening or anal opening of another person's
10 body or the stimulation by hand of another's genitals for the purposes of arousing or gratifying the
11 sexual desire of either person.

12 (6) "Sexually-explicit performance" means an act or show, intended to arouse, satisfy the
13 sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or
14 private, live, photographed, recorded, or videotaped.

15 **14-1.1-4. Immunity from prosecution for prostitution. --** Child victims of sexual
16 trafficking or sexual exploitation who are under the age of sixteen (16) years shall not be charged
17 with nor adjudicated for the crime of prostitution as enumerated in §11-34.1-2 or for the crime of
18 loitering for prostitution as enumerated in §11-34.1-3.

19 **14-1.1-5. Risk assessment and uniform response protocols. --** When a child is alleged
20 to be a victim of sex trafficking or sexual exploitation, the department of children, youth and
21 families or the law enforcement agency initially responding shall conduct a screening and risk
22 assessment to determine if the child should be considered to be a victim of sex trafficking or
23 sexual exploitation. Additionally, the responding agency(ies) shall use a uniform set of protocols
24 for responding to alleged incidents of child sex trafficking or sexual exploitation.

25 (1) The department of children, youth and families, in collaboration with the department
26 of the attorney general, and the department of public safety shall identify a screening/risk
27 assessment tool(s) to be used for this purpose.

28 (2) The department of children, youth and families, in collaboration with the department
29 of the attorney general and the local law enforcement agencies shall implement uniform response
30 protocols for addressing sex trafficking and sexual exploitation of minors to be used by the
31 department of children, youth and families and other agency(ies) when responding to such
32 incidents.

33 **14-1.1-6. Reporting child victims of sex trafficking and sexual exploitation as victims**
34 **of child abuse. --** Any child who is believed to be a victim of sex trafficking or sexual

1 exploitation shall be reported to the department of children, youth and families as an alleged
2 victim of child abuse or neglect in accordance with the provisions of chapter 11 of title 40.

3 (1) The department shall report all such allegations to the appropriate law enforcement
4 agency(ies) who shall investigate such allegations jointly with the department.

5 (2) A victim of sex trafficking or severe forms of trafficking as defined in §40-11-2 shall
6 be considered as a victim of child abuse and neglect and sexual abuse regardless of whether or
7 not the individual alleged to have perpetrated the sexual trafficking or severe forms of trafficking
8 is a parent of the child or other person responsible for the child's welfare.

9 (3) Should the department determine that the allegations of child abuse or neglect are
10 supported in accordance with evidentiary standards, the department shall provide, if needed,
11 appropriate services to the child and/or their family and may file a dependency, neglect, and/or
12 abuse petition in the family court.

13 **14-1.1-7. Access to crime injuries compensation fund. --** Any minor, or a person age
14 eighteen (18) but under the age of twenty-one (21) who is in the care and custody of the
15 department of children, youth and families, and who is identified as a victim of sex trafficking or
16 sexual exploitation shall be eligible to apply to the criminal injuries compensation fund in
17 accordance with the provisions of chapter 25 of title 12 and the rules and regulations promulgated
18 by the office of the general treasurer.

19 SECTION 3. Section 40-11-2 of the General Laws in Chapter 40-11 entitled "Abused and
20 Neglected Children" is hereby amended to read as follows:

21 **40-11-2. Definitions. --** When used in this chapter and unless the specific context
22 indicates otherwise:

23 (1) "Abused and/or neglected child" means a child whose physical or mental health or
24 welfare is harmed or threatened with harm when his or her parent or other person responsible for
25 his or her welfare:

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

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

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

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

33 (v) Fails to provide the child with a minimum degree of care or proper supervision or
34 guardianship because of his or her unwillingness or inability to do so by situations or conditions

1 such as, but not limited to, social problems, mental incompetency, or the use of a drug, drugs, or
2 alcohol to the extent that the parent or other person responsible for the child's welfare loses his or
3 her ability or is unwilling to properly care for the child; or

4 (vi) Abandons or deserts the child; or

5 (vii) Any child in need of services because another person:

6 ~~(vii)~~(A) Sexually exploits the child in that the person allows, permits or encourages the
7 child to engage in prostitution, sex trafficking, or other sex acts as defined by the provisions in
8 §§40-1.1-2 and 11-34.1-1 et seq., entitled "Commercial Sexual Activity"; or

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

14 ~~(ix)~~(C) Commits or allows to be committed any sexual offense against the child as such
15 sexual offenses are defined by the provisions of chapter 37 of title 11, entitled "Sexual Assault",
16 as amended; or

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

22 (2) "Child" means a person under the age of eighteen (18).

23 (3) "Child protective investigator" means an employee of the department charged with
24 responsibility for investigating complaints and/or referrals of child abuse and/or neglect and
25 institutional child abuse and/or neglect.

26 (4) "Commercial sex act" means any sex act or sexually explicit performance on account
27 of which anything of value is given, promised to, or received, directly or indirectly, by any
28 person.

29 ~~(4)~~(5) "Department" means department of children, youth, and families.

30 ~~(5)~~(6) "Institution" means any private or public hospital or other facility providing
31 medical and/or psychiatric diagnosis, treatment, and care.

32 ~~(6)~~(7) "Institutional child abuse and neglect" means situations of known or suspected
33 child abuse or neglect where the person allegedly responsible for the abuse or neglect is a foster
34 parent or the employee of a public or private residential child care institution or agency; or any

1 staff person providing out-of-home care or situations where the suspected abuse or neglect occurs
2 as a result of the institution's practices, policies, or conditions.

3 ~~(7)~~(8) "Law enforcement agency" means the police department in any city or town
4 and/or the state police.

5 ~~(8)~~(9) "Mental injury" includes a state of substantially diminished psychological or
6 intellectual functioning in relation to, but not limited to, such factors as: failure to thrive; ability
7 to think or reason; control of aggressive or self-destructive impulses; acting-out or misbehavior,
8 including incorrigibility, ungovernability, or habitual truancy; provided, however, that the injury
9 must be clearly attributable to the unwillingness or inability of the parent or other person
10 responsible for the child's welfare to exercise a minimum degree of care toward the child.

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

19 ~~(10)~~(11) "Physician" means any licensed doctor of medicine, licensed osteopathic
20 physician, and any physician, intern, or resident of an institution as defined in subdivision (5).

21 ~~(11)~~(12) "Probable cause" means facts and circumstances based upon as accurate and
22 reliable information as possible that would justify a reasonable person to suspect that a child is
23 abused or neglected. The facts and circumstances may include evidence of an injury or injuries,
24 and the statements of a person worthy of belief, even if there is no present evidence of injury.

25 (13) "Sex act" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or digital
26 intrusion or intrusion by any object into the genital opening or anal opening of another person's
27 body or the stimulation by hand of another's genitals for the purposes of arousing or gratifying the
28 sexual desire of either person.

29 (14) "Sexually-explicit performance" means an act or show, intended to arouse, satisfy
30 the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or
31 private, live, photographed, recorded, or videotaped.

32 ~~(12)~~(15) "Shaken baby syndrome" means a form of abusive head trauma, characterized
33 by a constellation of symptoms caused by other than accidental traumatic injury resulting from
34 the violent shaking of and/or impact upon an infant or young child's head.

1 (16) A "victim of sex trafficking" is a child or minor as defined in this chapter who has
2 been recruited, employed, enticed, solicited, isolated, harbored, transported, provided, persuaded,
3 obtained, induced or maintained by force, fraud or coercion for the purposes of performing
4 commercial sex acts

5 SECTION 4. 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 PROCEDURE -- SAFE HARBOR FOR SEXUALLY
EXPLOITED CHILDREN

1 This act would permit minor victims of sex trafficking to seek compensation under the
2 criminal injuries compensation act and would establish a safe harbor for sexually exploited
3 children, ie, prohibiting them from being prosecuted for acts done while being exploited for
4 sexual purposes, including commercial sexual activities. This act would also provide definitions
5 of "sex act" and "sexually explicit performance" for purposes of this act and requires that any
6 child who is believed to be a victim of sexual exploitation, would be reported to DCYF who shall
7 report such allegations to the appropriate law enforcement agency or agencies.

8 This act would take effect upon passage.

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