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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO CRIMINAL OFFENSES

Introduced By: Senators Lombardi, DiPalma, Jabour, Conley, and Lombardo

Date Introduced: March 25, 2014

Referred To: Senate Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 11-34.1-2 and 11-34.1-7 of the General Laws in Chapter 11-34.1
2 entitled "Commercial Sexual Activity" are hereby amended to read as follows:

3 **11-34.1-2. Prostitution.** -- (a) A person is guilty of prostitution when such person
4 engages, or agrees, or offers to engage in sexual conduct with another person in return for a fee.
5 Any person found guilty under this section shall be deemed guilty of a misdemeanor and shall be
6 subject to imprisonment for a term not exceeding six (6) months, or to a fine of not less than two
7 hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), or both.

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

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

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

- 16 (1) Being threatened or, subjected to physical harm;
17 (2) Being physically restrained or threatened to be physically restrained;
18 (3) Being subject to threats of abuse of law or legal process;
19 (4) Being subject to destruction, concealment, removal, or confiscation, of any passport

1 or other immigration document; or any other actual or purported governmental identification
2 document; or

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

5 **11-34.1-7. Pandering or permitting prostitution -- Not allowed. --** (a) It shall be
6 unlawful for any person, by any promise or threat, by abuse of person, or by any other device or
7 scheme, to cause, induce, persuade, or encourage a person to become a prostitute or to come into
8 this state or leave this state for the purpose of prostitution. It shall be unlawful for any person to
9 receive or give, or agree to receive or give, any money or thing of value for procuring or
10 attempting to procure any person to become a prostitute or to come into this state or leave this
11 state for the purpose of prostitution.

12 (b) It shall be unlawful for any person to knowingly permit, allow, transport, or offer or
13 agree to receive any person into any place, structure, house, building, room, or business for the
14 purpose of committing any commercial sexual activity, or knowingly permit any person to remain
15 in the premises for those purposes, or to, in any way, aid or abet or participate in any of the acts
16 or things enumerated in this chapter. ~~It shall also be unlawful for any~~ Any person, knowing a
17 person to be a prostitute, who shall live or derive support or maintenance, in whole or in part,
18 from the earnings or proceeds of commercial sexual activity, from moneys loaned, advanced to,
19 or charged against the prostitute by a landlord, manager, owner of a spa or business, or any other
20 place where commercial sexual activity is practiced or allowed, or who shall share in the
21 earnings, proceeds or moneys shall be guilty of the crime of permitting prostitution.

22 (c) Every person who commits any of the offenses described in subsection (a) of this
23 section, or who assists, abets, or aids another to commit any of those offenses, shall be guilty of
24 pandering. For the first offense, that person shall be punished by imprisonment for not less than
25 one year and not more than five (5) years and a fine of not less than two thousand dollars
26 (\$2,000), nor more than five thousand dollars (\$5,000). For every subsequent offense, that person
27 shall be punished by imprisonment for not less than three (3) years and not more than ten (10)
28 years and a fine of not less than five thousand dollars (\$5,000), nor more than ten thousand
29 dollars (\$10,000).

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

33 SECTION 2. Section 21-28-5.04 of the General Laws in Chapter 21-28 entitled "Uniform
34 Controlled Substances Act" is hereby amended to read as follows:

1 **21-28-5.04. Forfeiture of property and money.** -- (a) Any property, real or personal,
2 including, but not limited to, vessels, vehicles, or aircraft, and money or negotiable instruments,
3 securities, or other things of value or any property constituting, or derived from any proceeds,
4 furnished, or intended to be furnished, by any person for the transportation of, or in exchange for,
5 a controlled substance and ~~which that~~ has been, or is being used, in violation of ~~section §§~~21-28-
6 4.01(a) or [21-28-4.01](#) (b) or in, upon, or by means of which any violation of ~~section §§~~21-28-
7 4.01(a) or [21-28-4.01](#) (b) or ~~section §§~~21-28-4.01.1 or 21-28-4.01.2 [or 21-28-4.08](#) has taken, or is
8 taking place, and all real property including any right, title, and interest in the whole of any lot or
9 tract of land and any appurtenances or improvements ~~which is~~ used in the commission of a
10 violation of ~~section §§~~21-28-4.01(a) or [21-28-4.01](#) (b) or ~~section §§~~21-28-4.01.1 or 21-28-4.01.2
11 [or 21-28-4.08](#), or ~~which that~~ was purchased with funds obtained as a result of the commission of a
12 violation of ~~section §§~~21-28-4.01(a) or [21-28-4.01](#) (b) or ~~section §§~~21-28-4.01.1 or 21-28-4.01.2
13 [or 21-28-4.08](#), shall be seized and forfeited; provided that no property or money, as enumerated in
14 this subsection, used by any person shall be forfeited under the provisions of this chapter unless it
15 shall appear that the owner of the property or money had knowledge, actual or constructive, and
16 was a consenting party to the alleged illegal act. All moneys, coin and currency, found in close
17 proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing
18 paraphernalia, or to forfeitable records of the importation, manufacture, or distribution of
19 controlled substances, are presumed to be unlawfully furnished in exchange for a controlled
20 substance or used in violation of this chapter. The burden of proof is upon claimants of the
21 property to rebut this presumption.

22 (b) Property taken or detained under this section shall not be repleviable, but shall be
23 deemed to be in the custody of the law enforcement agency making the seizure and whenever
24 property or money is forfeited under this chapter it shall be utilized as follows:

25 (1) Where the seized property is a vessel, vehicle, aircraft, or other personal property it
26 may be retained and used by the law enforcement agency that seized the property where the use
27 of the property is reasonably related to the law enforcement duties of the seizing agency. If the
28 seized property is a motor vehicle that is inappropriate for use by the law enforcement agency due
29 to style, size, or color, the seizing agency shall be allowed to apply the proceeds of sale or the
30 ~~trade~~-in value of the vehicle towards the purchase of an appropriate vehicle for use ~~for~~ [in](#)
31 activities reasonably related to law enforcement duties.

32 (2) The law enforcement agency may sell any forfeited property, ~~which is~~ not required
33 by this chapter to be destroyed and ~~which is~~ not harmful to the public. The proceeds from the sale
34 are to be distributed in accordance with subdivision (3) of this subsection.

1 (3) As to the proceeds from the sale of seized property as referred to in subdivision (2) of
2 this subsection, and as to moneys, coin and currency, negotiable instruments, securities, or other
3 things of value as referred to in subsection (a) of this section, the distribution shall be as follows:

4 (i) (A) All proceeds of the forfeiture of real or personal property shall be distributed as
5 follows: All costs of advertising administrative forfeitures shall first be deducted from the amount
6 forfeited. Of the remainder, twenty percent (20%) of the proceeds shall be provided to the
7 attorney general's department to be used for further drug-related law enforcement activities
8 including, but not limited to, investigations, prosecutions, and the administration of this chapter;
9 seventy percent (70%) of the proceeds shall be divided among the state and local law
10 enforcement agencies proportionately based upon their contribution to the investigation of the
11 criminal activity related to the asset being forfeited; and ten percent (10%) of the proceeds shall
12 be provided to the department of health for distribution to substance abuse treatment programs.

13 (B) The law enforcement agencies involved in the investigation, with the assistance of
14 the attorney general, shall by agreement determine the respective proportionate share to be
15 received by each agency. If the agencies are unable to reach agreement, application shall be made
16 by one or more of the agencies involved to the presiding justice of the superior court, who shall
17 determine the respective proportionate share attributable to each law enforcement agency. The
18 proceeds from all forfeitures shall be held by the general treasurer in a separate account until such
19 time as an allocation is determined by agreement of the agencies or by the presiding justice. It
20 shall be the duty and responsibility of the general treasurer to disburse the allocated funds from
21 the separate account to the respective law enforcement agencies.

22 (ii) Each state or local law enforcement agency shall be entitled to keep the forfeited
23 money or the proceeds from sales of forfeited property. The funds shall be used for law
24 enforcement purposes and investigations of violations of this chapter. The funds received by a
25 state law enforcement agency shall be maintained in a separate account by the general treasurer.
26 The funds received by a local law enforcement agency shall be maintained in a separate account
27 by the local agency's city or town treasurer.

28 (c) (1) There is established in the state's treasury a special fund to be known as the asset
29 forfeiture fund in which shall be deposited the excess proceeds of forfeitures arising out of
30 criminal acts occurring before July 1, 1987. The asset forfeiture fund shall be used to fund drug-
31 related law enforcement activity and the treatment and rehabilitation of victims of drug abuse.
32 The fund shall be administered through the office of the general treasurer. The presiding justice of
33 the superior court shall have the authority to determine the feasibility and amount of disbursement
34 to those state or local law enforcement agencies ~~which~~ that have made application.

1 (2) Upon the application of any law enforcement agency of the state of Rhode Island,
2 when a special need exists concerning the enforcement of the provisions of this chapter, the
3 attorney general, or his or her designee, may apply to the presiding justice of the superior court
4 for the release from the general treasury of sums of money. When the presiding justice upon
5 consideration of the reasons set forth by that agency deems them to be reasonable and necessary
6 to the accomplishment of a goal within the powers and duties of that law enforcement agency, he
7 or she may issue an order ex parte providing for the release of the funds.

8 (d) Each law enforcement agency making any seizure(s) ~~which~~ that result(s) in a
9 forfeiture pursuant to this section shall certify and file with the state treasurer between January 1
10 and January 30 an annual report detailing the property or money forfeited during the previous
11 calendar year and the use or disposition of the property or money. The report shall be made in the
12 form and manner as may be provided or specified by the treasurer and these annual law
13 enforcement agency reports shall be provided to the local governmental body governing the
14 agency and to the house and senate judiciary committees.

15 (e) Any law enforcement agency whose duty it is to enforce the laws of this state relating
16 to controlled substances is empowered to authorize designated officers or agents to carry out the
17 seizure provisions of this chapter. It shall be the duty of any officer or agent authorized or
18 designated, or authorized by law, whenever he or she shall discover any property or monies
19 ~~which~~ that have been, or are being, used in violation of any of the provisions of this chapter, or in,
20 upon, or by means of which any violation of this chapter has taken or is taking place, to seize the
21 property or monies and to place it in the custody of the person as may be authorized or designated
22 for that purpose by the respective law enforcement agency pursuant to those provisions.

23 (f) For purposes of this section and ~~section~~ §30-14-2 only, the Rhode Island national
24 guard shall be deemed a law enforcement agency eligible to participate in the forfeiture of money
25 and assets seized through counterdrug operations in which members of the guard support federal,
26 state or municipal efforts.

27 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would subject the proceeds derived from pandering or permitting prostitution
- 2 from conspiracy to violate the uniformed controlled substances act to seizure and forfeiture.
- 3 This act would take effect upon passage.

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