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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO CRIMINAL OFFENSES

Introduced By: Senator Michael J. McCaffrey

Date Introduced: March 01, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 11-34.1 of the General Laws entitled "Commercial Sexual
2 Activity" is hereby amended by adding thereto the following section:

3 **11-34.1-15. Forfeiture.** – Any proceeds derived directly from a violation of this chapter
4 are subject to seizure and forfeiture and further proceedings shall be had for their forfeiture as is
5 prescribed by law in chapter 21 of title 12 (“Recovery of Fines, Penalties, and Forfeitures”).

6 SECTION 2. Section 11-34.1-2 of the General Laws in Chapter 11-34.1 entitled
7 "Commercial Sexual Activity" is hereby amended to read as follows:

8 **11-34.1-2. Prostitution.** -- (a) A person is guilty of prostitution when such person
9 engages or agrees or offers to engage in sexual conduct with another person in return for a fee.
10 Any person found guilty under this section shall be deemed guilty of a misdemeanor and shall be
11 subject to imprisonment for a term not exceeding six (6) months, or to a fine of not less than two
12 hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), or both.

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

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

19 ~~(d)~~(c) In any prosecution for a violation under this section it shall be an affirmative

1 defense if the accused was forced to commit a commercial sexual activity by:

2 (1) Being threatened or, subjected to physical harm;

3 (2) Being physically restrained or threatened to be physically restrained;

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

5 (4) Being subject to destruction, concealment, removal or confiscation, of any passport
6 or other immigration document, or any other actual or purported governmental identification
7 document; or

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

10 SECTION 3. Section 21-28-5.04 of the General Laws in Chapter 21-28 entitled "Uniform
11 Controlled Substances Act" is hereby amended to read as follows:

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

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

1 (1) Where the seized property is a vessel, vehicle, aircraft, or other personal property it
2 may be retained and used by the law enforcement agency that seized the property where the use
3 of the property is reasonably related to the law enforcement duties of the seizing agency. If the
4 seized property is a motor vehicle that is inappropriate for use by the law enforcement agency due
5 to style, size, or color, the seizing agency shall be allowed to apply the proceeds of sale or the
6 trade in value of the vehicle towards the purchase of an appropriate vehicle for use for activities
7 reasonably related to law enforcement duties.

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

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

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

23 (B) The law enforcement agencies involved in the investigation with the assistance of the
24 attorney general shall by agreement determine the respective proportionate share to be received
25 by each agency. If the agencies are unable to reach agreement, application shall be made by one
26 or more of the agencies involved to the presiding justice of the superior court, who shall
27 determine the respective proportionate share attributable to each law enforcement agency. The
28 proceeds from all forfeitures shall be held by the general treasurer in a separate account until such
29 time as an allocation is determined by agreement of the agencies or by the presiding justice. It
30 shall be the duty and responsibility of the general treasurer to disburse the allocated funds from
31 the separate account to the respective law enforcement agencies.

32 (ii) Each state or local law enforcement agency shall be entitled to keep the forfeited
33 money or the proceeds from sales of forfeited property. The funds shall be used for law
34 enforcement purposes and investigations of violations of this chapter. The funds received by a

1 state law enforcement agency shall be maintained in a separate account by the general treasurer.
2 The funds received by a local law enforcement agency shall be maintained in a separate account
3 by the local agency's city or town treasurer.

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

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

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

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

33 (f) For purposes of this section and section 30-14-2 only, the Rhode Island national
34 guard shall be deemed a law enforcement agency eligible to participate in the forfeiture of money

1 and assets seized through counterdrug operations in which members of the guard support federal,
2 state or municipal efforts.

3 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 OFFENSES

1 This act would provide that any proceeds derived from criminal commercial sexual
2 activity, including, but not limited to, prostitution, would be subject to seizure and forfeiture. The
3 act would also provide for the forfeiture of property and proceeds pertaining to the crime of
4 conspiracy.

5 This act would take effect upon passage.

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