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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

AN ACT RELATING CRIMINAL OFFENSES - UNIFORM ACT ON PREVENTION OF AND
REMEDIES FOR HUMAN TRAFFICKING

Introduced By: Senators Morgan, Kettle, Gee, Lombardi, and Goodwin

Date Introduced: February 11, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 11 of the General Laws entitled "CRIMINAL OFFENSES" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 67.1

4 UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

5 **11-67.1-1. Short title.** – This chapter shall be known and cited as the "Uniform Act on
6 Prevention of and Remedies for Human Trafficking".

7 **11-67.1-2. Definitions.** -- (a) For purposes of this chapter:

8 (1) "Adult" means an individual eighteen (18) years of age or older.

9 (2) "Coercion" means:

10 (i) The use or threat of force against, abduction of, serious harm to, or physical restraint
11 of, an individual;

12 (ii) The use of a plan, pattern, or statement with intent to cause an individual to believe
13 that failure to perform an act will result in the use of force against, abduction of, serious harm to,
14 or physical restraint of, an individual;

15 (iii) The abuse or threatened abuse of law or legal process;

16 (iv) Controlling or threatening to control an individual's access to a controlled substance
17 as defined in §21-28-1.02.

18 (v) The destruction or taking of or the threatened destruction or taking of an individual's

1 identification document or other property;
2 (vi) The use of debt bondage;
3 (vii) The use of an individual's physical or mental impairment when the impairment has
4 a substantial adverse effect on the individual's cognitive or volitional function; or
5 (viii) The commission of civil or criminal fraud.
6 (3) "Commercial sexual activity" means sexual activity for which anything of value is
7 given to, promised to, or received, by a person.
8 (4) "Debt bondage" means inducing an individual to provide:
9 (i) Commercial sexual activity in payment toward or satisfaction of a real or purported
10 debt; or
11 (ii) Labor or services in payment toward or satisfaction of a real or purported debt if:
12 (A) The reasonable value of the labor or services is not applied toward the liquidation of
13 the debt; or
14 (B) The length of the labor or services is not limited and the nature of the labor or
15 services is not defined.
16 (5) "Human trafficking" means the commission of an offense created by §§11-67.1-3
17 through 11-67.1-7.
18 (6) "Identification document" means a passport, driver's license, immigration document,
19 travel document, or other government-issued identification document, including a document
20 issued by a foreign government.
21 (7) "Labor or services" means activity having economic value.
22 (8) "Minor" means an individual less than eighteen (18) years of age.
23 (9) "Person" means an individual, estate, business or nonprofit entity, or other legal
24 entity. The term does not include a public corporation or government or governmental
25 subdivision, agency, or instrumentality.
26 (10) "Serious harm" means harm, whether physical or nonphysical, including
27 psychological, economic, or reputational, to an individual which would compel a reasonable
28 individual of the same background and in the same circumstances to perform or continue to
29 perform labor or services or sexual activity to avoid incurring the harm.
30 (11) "Sexual activity" means sexual intercourse, cunnilingus, fellatio, anal intercourse or
31 the intentional touching of the victim's or accused's intimate body parts, clothed or unclothed, if
32 the touching is for the purpose of sexual arousal, gratification or assault. The term includes a
33 sexually-explicit performance.
34 (12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the

1 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
2 the United States. The term includes an Indian tribe or band recognized by federal law or
3 formally acknowledged by a state.

4 (B) "Victim" means an individual who is subjected to human trafficking or to conduct
5 that would have constituted human trafficking had this chapter been in effect when the conduct
6 occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

7 **11-67.1-3. Trafficking an individual. --** (a) A person commits the offense of trafficking
8 an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides,
9 obtains, isolates, maintains, or entices an individual in furtherance of:

10 (1) Forced labor in violation of §11-67.1-4; or

11 (2) Sexual servitude in violation of §11-67.1-5.

12 (b) Every person who shall commit sex trafficking of a minor shall be guilty of a felony,
13 subject to not more than fifty (50) years imprisonment, a fine of up to forty thousand dollars
14 (\$40,000), or both.

15 (c) Every person who shall commit sex trafficking of an adult shall be guilty of a felony,
16 subject to not more than twenty (20) years imprisonment, a fine of up to twenty thousand dollars
17 (\$20,000), or both.

18 **11-67.1-4. Forced labor. --** (a) A person commits the offense of forced labor if the
19 person knowingly uses coercion to compel an individual to provide labor or services, except
20 when such conduct is permissible under federal law or law of this state other than this chapter.

21 (b) Every person who shall commit forced labor of a minor shall be guilty of a felony,
22 subject to not more than fifty (50) years imprisonment, a fine of up to forty thousand dollars
23 (\$40,000), or both.

24 (c) Every person who shall commit forced labor of an adult shall be guilty of a felony,
25 subject to not more than twenty (20) years imprisonment, a fine of up to twenty thousand dollars
26 (\$20,000), or both.

27 **11-67.1-5. Sexual servitude. --** (a) A person commits the offense of sexual servitude if
28 the person knowingly:

29 (1) Maintains or makes available a minor for the purpose of engaging the minor in
30 commercial sexual activity; or

31 (2) Uses coercion or deception to compel an adult to engage in commercial sexual
32 activity.

33 (b) It is not a defense in a prosecution under subsection (a)(1) of this section that the
34 minor consented to engage in commercial sexual activity or that the defendant believed the minor

1 was an adult.

2 (c) Every person who shall commit sexual servitude of a minor shall be guilty of a felony,
3 subject to not more than fifty (50) years imprisonment, a fine of up to forty thousand dollars
4 (\$40,000), or both.

5 (d) Every person who shall commit sexual servitude of an adult shall be guilty of a
6 felony, subject to not more than twenty (20) years imprisonment, a fine of up to twenty thousand
7 dollars (\$20,000), or both.

8 **11-67.1-6. Patronizing a victim of sexual servitude. --** (a) A person commits the
9 offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give
10 or offers to give anything of value so that an individual may engage in commercial sexual activity
11 with another individual and the person knows that the other individual is a victim of sexual
12 servitude.

13 (b) Every person who shall patronize a minor for purposes of sexual servitude of a minor
14 shall be guilty of a felony, subject to not more than twenty (20) years imprisonment, a fine of up
15 to twenty thousand dollars (\$20,000), or both.

16 (c) Every person who shall commit sexual servitude of an adult shall be guilty of a
17 felony, subject to not more than ten (10) years imprisonment, a fine of up to ten thousand dollars
18 (\$10,000), or both.

19 **11-67.1-7. Patronizing a minor for commercial sexual activity. --** (a) A person
20 commits the offense of patronizing a minor for commercial sexual activity if:

21 (1) With the intent that an individual will engage in commercial sexual activity with a
22 minor, the person gives, agrees to give, or offers to give anything of value to a minor or another
23 person so that the individual may engage in commercial sexual activity with a minor; or

24 (2) The person gives, agrees to give, or offers to give anything of value to a minor or
25 another person so that an individual may engage in commercial sexual activity with a minor.

26 (b) Every person who shall patronize a minor for purposes of commercial sexual activity
27 with a minor shall be guilty of a felony, subject to not more than ten (10) years imprisonment, a
28 fine of up to twenty thousand dollars (\$20,000), or both.

29 (c) Every person who shall patronize an adult for purposes of commercial sexual activity
30 with an adult shall be guilty of a felony, subject to not more than five (5) years imprisonment, a
31 fine of up to ten thousand dollars (\$10,000), or both.

32 **11-67.1-8. Business entity liability. --** (a) A person that is a business entity may be
33 prosecuted for an offense under §§11-67.1-3 through 11-67.1-7 only if:

34 (1) The entity knowingly engages in conduct that constitutes human trafficking; or

1 (2) An employee or nonemployee agent of the entity engages in conduct that constitutes
2 human trafficking and the conduct is part of a pattern of activity in violation of this chapter for
3 the benefit of the entity, which the entity knew was occurring and failed to take effective action to
4 stop.

5 (b) When a person that is a business entity is prosecuted for an offense under §§11-67.1-3
6 through 11-67.1-7, the court may consider the severity of the entity's conduct and order penalties
7 in addition to those otherwise provided for the offense, including:

8 (1) A fine of not more than fifty thousand dollars (\$50,000) per offense;

9 (2) Disgorgement of profit from activity in violation of this chapter; and

10 (3) Debarment from state and local government contracts.

11 **11-67.1-9. Aggravating circumstance.** -- (a) An aggravating circumstance during the
12 commission of an offense under §§11-67.1-3, 11-67.1-4, or 11-67.1-5 occurs when:

13 (1) The defendant recruited, enticed, or obtained the victim of the offense from a shelter
14 that serves individuals subjected to human trafficking, domestic violence, or sexual assault,
15 runaway youth, foster children, or the homeless; or

16 (2) Kidnaps, holds hostage or otherwise keeps the victim against their will.

17 (b) If the trier of fact finds that an aggravating circumstance occurred during the
18 commission of an offense under §§11-67.1-3, 11-67.1-4, or 11-67.1-5, the defendant may be
19 imprisoned for up to five (5) years in addition to the period of imprisonment prescribed for the
20 offense. Any sentence so imposed shall run consecutively to any other sentence imposed.

21 **11-67.1-10. Restitution.** -- (a) The court shall order a person convicted of an offense
22 under §§11-67.1-3, 11-67.1-4, or 11-67.1-5 to pay restitution to the victim of the offense for:

23 (1) Expenses incurred or reasonably certain to be incurred by the victim as a result of the
24 offense, including reasonable attorney's fees and costs; and

25 (2) An amount equal to the greatest of the following, with no reduction for expenses the
26 defendant incurred to maintain the victim:

27 (i) The gross income to the defendant for, or the value to the defendant of, the victim's
28 labor or services or sexual activity;

29 (ii) The amount the defendant contracted to pay the victim; or

30 (iii) The value of the victim's labor or services or sexual activity, calculated under the
31 minimum wage and overtime provisions of the "Fair Labor Standards Act", 29 U.S.C. §§201 et
32 seq., or subsection (a)(2) of this section, whichever is greater, even if the provisions do not apply
33 to the victim's labor or services or sexual activity.

34 (b) The court shall order restitution under subsection (a) of this section even if the victim

1 is unavailable to accept payment of restitution.

2 (c) If the victim does not claim restitution ordered under subsection (a) of this section for
3 five (5) years after entry of the order, the restitution must be paid to criminal injuries
4 compensation fund as established in chapter 25 of title 12.

5 **11-67.1-11. Forfeiture. --** (a) On motion, the court shall order a person convicted of an
6 offense under §§11-67.1-3, 11-67.1-4, or 11-67.1-5 to forfeit any interest in real or personal
7 property that:

8 (1) Was used or intended to be used to commit or facilitate the commission of the
9 offense; or

10 (2) Constitutes proceeds or was derived from proceeds that the person obtained, directly
11 or indirectly, as a result of the offense.

12 (b) In a proceeding against real or personal property under this section, the person
13 convicted of the offense may assert a defense that the forfeiture is manifestly disproportional to
14 the seriousness of the offense. The person has the burden to establish the defense by a
15 preponderance of the evidence.

16 (c) Proceeds from the public sale or auction of property forfeited under subsection (a) of
17 this section must be distributed in the manner provided for the distribution of the proceeds of
18 criminal forfeitures act pursuant to §§21-28-5.04.1 and 21-28-5.04.2.

19 **11-67.1-12. Statute of limitations. --** A prosecution for an offense under this chapter
20 must be commenced not later than ten (10) years after commission of the offense.

21 **11-67.1-13. Victim confidentiality. --** In an investigation of, or a prosecution for an
22 offense under this chapter, every agency of state or local government shall keep confidential the
23 identity, pictures, and images of the alleged victim and the family of the alleged victim, except to
24 the extent that disclosure is:

25 (1) Necessary for the purpose of investigation or prosecution;

26 (2) Required by law or court order; or

27 (3) Necessary to ensure provision of services or benefits for the victim or the victim's
28 family.

29 **11-67.1-14. Past sexual behavior of victim. --** In a prosecution for an offense under this
30 chapter or a civil action under §11-67.1-18, evidence of a specific instance of the alleged victim's
31 past sexual behavior or reputation or opinion evidence of past sexual behavior of the alleged
32 victim is not admissible unless the evidence is:

33 (1) Admitted in accordance with §11-37-13; or

34 (2) Offered by the prosecution to prove a pattern of human trafficking by the defendant.

1 **11-67.1-15. Immunity of minor.** -- (a) An individual is not criminally liable or subject to
2 a delinquency proceeding in the family court for prostitution or solicitation to commit a sexual act
3 if the individual was a minor at the time of the offense and committed the offense as a direct
4 result of being a victim.

5 (b) An individual who has engaged in commercial sexual activity is not criminally liable
6 or subject to a delinquency proceeding in the family court for prostitution or solicitation to
7 commit a sexual act if the individual was a minor at the time of the offense.

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

11 (d) This section does not apply in a prosecution or a delinquency proceeding for
12 patronizing a prostitute.

13 **11-67.1-16. Affirmative defense of victim.** -- An individual charged with prostitution or
14 solicitation to commit a sexual act, committed as a direct result of being a victim may assert an
15 affirmative defense that the individual is a victim.

16 **11-67.1-17. Motion to vacate and expunge conviction.** -- (a) An individual convicted of
17 prostitution or solicitation to commit a sexual act, committed as a direct result of being a victim
18 may apply by motion to the court having jurisdiction over the offense, to vacate the conviction
19 and expunge the record of conviction. The court may grant the motion on a finding that the
20 individual's participation in the offense was a direct result of being a victim.

21 (b) No official determination or documentation is required to grant a motion by an
22 individual under subsection (a) of this section, but an official determination or documentation
23 from a federal, state, local, or tribal agency that the individual was a victim at the time of the
24 offense creates a presumption that the individual's participation was a direct result of being a
25 victim.

26 (c) A motion filed under subsection (a) of this section, any hearing conducted on the
27 motion, and any relief granted shall be conducted in accordance with the provisions of chapter 1.3
28 of title 12.

29 **11-67.1-18. Civil action.** -- (a) A victim may bring a civil action against a person that
30 commits an offense against the victim under §§11-67.1-3, 11-67.1-4, or 11-67.1-5 for
31 compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

32 (b) If a victim prevails in an action under this section, the court shall award the victim
33 reasonable attorney's fees and costs.

34 (c) An action under this section must be commenced not later than ten (10) years after the

1 later of the date on which the victim:

2 (1) No longer was subject to human trafficking; or

3 (2) Attained eighteen (18) years of age.

4 (d) Damages awarded to a victim under this section for an item must be offset by any
5 restitution paid to the victim pursuant to §11-67.1-10.

6 (e) This section does not preclude any other remedy available to a victim under federal
7 law or other general or public law of this state other than this chapter.

8 **11-67.1-19. Council on human trafficking. --** (a) The council on human trafficking is
9 created in the executive branch. The governor shall appoint the chair and members of the council.

10 Members must include representatives of:

11 (1) Department of attorney general, department of health, department of children, youth
12 and families, department of mental healthcare, developmental disabilities and hospitals, and law
13 enforcement, that have contact with victims or perpetrators;

14 (2) Non-governmental organizations that represent, advocate for, or provide services to
15 victims; and

16 (3) Other organizations and individuals, including victims, whose expertise would benefit
17 the council.

18 (b) The state agencies represented on the council shall provide staff to the council.

19 (c) The council shall meet on a regular basis and:

20 (1) Develop a coordinated and comprehensive plan to provide victims with services;

21 (2) Collect and evaluate data on human trafficking in this state and submit an annual
22 report to the governor and legislature;

23 (3) Promote public awareness about human trafficking, victim remedies and services, and
24 trafficking prevention;

25 (4) Create a public awareness sign that contains the state and National Human
26 Trafficking Resource Center hotline information.

27 (5) Coordinate training on human trafficking prevention and victim services for state and
28 local employees who may have recurring contact with victims or perpetrators; and

29 (6) Conduct other appropriate activities.

30 **11-67.1-20. Display of public awareness sign; penalty for failure to display. --** (a) Any
31 public or quasi-public transportation agency shall display a public awareness sign that contains
32 the state and National Human Trafficking Resource Center hotline information in every
33 transportation station, rest area, and welcome center in the state which is open to the public.

34 (b) An employer shall display the public awareness sign described in subsection (a) of

1 this section in a place that is clearly conspicuous and visible to employees and the public at each
2 of the following locations in this state at which the employer has employees:

3 (1) A strip club or other sexually-oriented business;

4 (2) A business entity previously found to be a nuisance for prostitution

5 (3) A job-recruitment center;

6 (4) A hospital; or

7 (5) An emergency-care provider.

8 (c) The department of labor and training shall impose a fine of three hundred dollars
9 (\$300) per violation on an employer that knowingly fails to comply with subsection (b) of this
10 section. The fine shall be the exclusive remedy for failure to comply.

11 **11-67.1-21. Eligibility for benefit or service.** -- (a) A victim is eligible for a benefit or
12 service available through the state in any plan established by the council on human trafficking
13 [and identified in the plan developed under §11-67.1-19(c)(1)], including compensation under the
14 criminal injuries compensation act pursuant to chapter 25 of title 12, regardless of immigration
15 status.

16 (b) A minor who has engaged in commercial sexual activity is eligible for a benefit or
17 service available through the state in any plan established by the council on human trafficking,
18 regardless of immigration status.

19 (c) As soon as practicable after a first encounter with an individual who reasonably
20 appears to any state or local agency, to be a victim or a minor who has engaged in commercial
21 sexual activity, the agency shall notify the department of attorney general, the state and local law
22 enforcement agency, and the department of health that the individual may be eligible for a benefit
23 or service pursuant to this chapter.

24 **11-67.1-22. Law enforcement protocol.** -- (a) On request from an individual whom a
25 law enforcement officer or agent thereof, reasonably believes is a victim who is or has been
26 subjected to a severe form of trafficking or criminal offense required for the individual to qualify
27 for a nonimmigrant T or U visa under 8 U.S.C. §1101(a)(15)(T), or 8 U.S.C. §1101(a)(15)(U), or
28 for continued presence under 22 U.S.C. §7105(c)(3), the law enforcement officer, as soon as
29 practicable after receiving the request, shall complete, sign, and give to the individual the Form I-
30 914B or Form I-918B provided by the United States Citizenship and Immigration Services on its
31 Internet website and request assistance from the local Immigration and Naturalization office.

32 (b) If the law enforcement agency or officer determines that an individual does not meet
33 the requirements for the agency to comply with subsection (a) of this section, the agency shall
34 inform the individual of the reason and that the individual may make another request under

1 subsection (a) of this section, and submit additional evidence satisfying the requirements.

2 **11-67.1-23. Grant to or contract with service provider.** -- (a) To the extent that funds
3 are appropriated for this purpose, the council on human trafficking may make a grant to or
4 contract with any unit of state or local government, or non-governmental victims' service
5 organization to develop or expand service programs for victims.

6 (b) A recipient of a grant or contract under subsection (a) of this section shall report
7 annually to the council on human trafficking the number and demographic information of all
8 victims receiving services under the grant or contract.

9 **11-67.1-24. Uniformity of application and construction.** -- In applying and construing
10 this uniform act, consideration must be given to the need to promote uniformity of the law with
11 respect to its subject matter among states that enact it.

12 **11-67.1-25. Severability.** -- If any provision of this chapter or its application to any
13 person or circumstance is held invalid, the invalidity does not affect other provisions or
14 applications of this chapter which can be given effect without the invalid provision or application,
15 and to this end the provisions of this chapter are severable.

16 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

AN ACT RELATING CRIMINAL OFFENSES - UNIFORM ACT ON PREVENTION OF AND
REMEDIES FOR HUMAN TRAFFICKING

1 This act would create the "Uniform Act on Prevention and Remedies for Human
2 Trafficking" which would establish penalties and remedies for human trafficking and would make
3 human trafficking and human trafficking for purposes of sexual servitude, forced labor,
4 commercial sexual activity felonies punishable by imprisonment and fines. This act would also
5 establish a council on human trafficking for the prevention of such offenses and would establish
6 programs to assist victims and would make victims eligible for compensation under the criminal
7 injuries compensation act.

8 This act would take effect upon passage.

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