

2009 -- S 0596 SUBSTITUTE A

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LC01591/SUB A/4
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO CRIMINAL OFFENSES - PROSTITUTION AND LEWDNESS

Introduced By: Senators Jabour, E O'Neill, Lynch, Cote, and Picard

Date Introduced: February 25, 2009

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 11-34-1, 11-34-2, 11-34-3, 11-34-4, 11-34-5, 11-34-5.1, 11-34-6,
2 11-34-7, 11-34-8, 11-34-8.1, 11-34-8.2, 11-34-9 and 11-34-10 of the General Laws in Chapter
3 11-34 entitled "Prostitution and Lewdness" are hereby repealed.

4 ~~**11-34-1. Pandering.** -- (a) It shall be unlawful for any person to secure a person for a~~
5 ~~house of ill fame, or to procure for a person a place as inmate of a house of ill fame; or by any~~
6 ~~promise, threat, by abuse of person, or by any other device or scheme, to cause, induce, persuade,~~
7 ~~or encourage a person to become a prostitute, to enter upon or lead a wanton or dissolute life, to~~
8 ~~become an inmate of a house of ill fame, to enter a place in which prostitution is encouraged or~~
9 ~~allowed, or remain in it as an inmate, or to come into this state or leave this state for the purpose~~
10 ~~of prostitution. It shall be unlawful for any person to receive or give, or agree to receive or give,~~
11 ~~any money or thing of value for procuring or attempting to procure any person to become a~~
12 ~~prostitute, to enter upon or lead a wanton or dissolute life, or to become an inmate of a house of~~
13 ~~ill fame, either within or without this state, or come into this state or leave this state for the~~
14 ~~purpose of prostitution. It shall be unlawful for any person by any means to keep, hold, or detain~~
15 ~~against his or her will or restrain any person in any place for the purpose of prostitution, or in a~~
16 ~~house of ill fame or other place where prostitution is practiced or allowed for any purpose; or to~~
17 ~~directly or indirectly keep, hold, detain, or restrain, or attempt to keep, hold, detain, or restrain in~~
18 ~~any house of ill fame or other place where prostitution is allowed or practiced, any person by any~~
19 ~~means for the purpose of compelling that person, directly or indirectly, to pay, liquidate, or cancel~~

1 ~~any debt, dues, or obligations incurred or said to have been incurred by that person.~~

2 ~~-(b) Every person who commits any of the offenses described in subsection (a) of this~~
3 ~~section, or who assists, abets, or aids another to commit any of those offenses, shall be guilty of~~
4 ~~pandering. For the first offense that person shall be punished by imprisonment for not less than~~
5 ~~one year and not more than five (5) years and a fine of not less than two thousand dollars~~
6 ~~(\$2,000), nor more than five thousand dollars (\$5,000). For every subsequent offense that person~~
7 ~~shall be punished by imprisonment for not less than three (3) years and not more than ten (10)~~
8 ~~years and a fine of not less than five thousand dollars (\$5,000), nor more than ten thousand~~
9 ~~dollars (\$10,000).~~

10 ~~**11-34-2. Venue of pandering prosecutions.** --- It shall not be a defense to any~~
11 ~~prosecution for any of the offenses described in section 11-34-1 that the offense or any part of the~~
12 ~~offense shall have been committed outside the state, and any offense described in section 11-34-1~~
13 ~~may be alleged to have been committed. The offender may be prosecuted and punished in any~~
14 ~~county in which the offender or the person upon or against whom the offense was committed may~~
15 ~~be found, or in which the offense was consummated, or in which any overt acts in furtherance of~~
16 ~~the offenses shall have been committed.~~

17 ~~**11-34-3. Spouse as witness in pandering prosecution.** --- In any prosecution for any~~
18 ~~offense under section 11-34-1, any person shall be a competent witness against the offender in~~
19 ~~relation to any pandering offense committed by the offender upon or against him or her, or by the~~
20 ~~offender against or upon another person or persons in his or her presence, notwithstanding that~~
21 ~~person may have been married to the offender before or after the commission of the offense, and~~
22 ~~notwithstanding that person may be called as a witness during the existence of the marriage or~~
23 ~~after its dissolution.~~

24 ~~**11-34-4. Search for and delivery of inmate of house of ill fame.** --- Whenever there is~~
25 ~~reason to believe that any person has been inveigled, enticed, induced, persuaded, or encouraged~~
26 ~~to enter a house of ill fame or other place where prostitution is allowed or practiced, or is being~~
27 ~~kept, held, detained, or restrained in any house of ill fame or other place where prostitution is~~
28 ~~allowed or practiced, upon complaint being made under oath by any director of human services,~~
29 ~~member of the division of state police, sheriff, deputy sheriff, chief of police, town sergeant, or~~
30 ~~constable, or by the parent, master, or guardian of the person, to any justice or clerk of a district~~
31 ~~court authorized to issue warrants, the justice or clerk may issue a warrant to enter by day or night~~
32 ~~the house of ill fame or other place, to search for the person, and to bring that person and the~~
33 ~~person in whose possession or keeping he or she may be found before the district court. The court~~
34 ~~may, on examination, order that person to be delivered to the director of human services, parent,~~

1 ~~master, or guardian, or to be placed in the charge of a probation officer, or to be discharged in~~
2 ~~accordance with law.~~

3 ~~**11-34-5. Transportation for indecent purposes -- Harboring prostitution.** -- (a) It~~
4 ~~shall be unlawful for any person, for pecuniary gain, to secure, direct, or transport, or offer to~~
5 ~~secure, direct, or transport another for the purpose of prostitution, or for any other lewd or~~
6 ~~indecent act; or to receive or offer or agree to receive any person into any place, structure, house,~~
7 ~~building, room, or conveyance for the purpose of committing any such acts, or knowingly permit~~
8 ~~any person to remain in the premises for those purposes, or to, in any way, aid or abet or~~
9 ~~participate in any of the acts or things enumerated in this chapter.~~

10 ~~(b) Any person found guilty under this section shall be subject to imprisonment in the~~
11 ~~adult correctional institutions for not less than one year and not more than five (5) years, and a~~
12 ~~fine of not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000).~~
13 ~~For every subsequent offense that person shall be punished by imprisonment for not less than~~
14 ~~three (3) years and for not more than ten (10) years and a fine of not less than five thousand~~
15 ~~dollars (\$5,000) nor more than ten thousand dollars (\$10,000).~~

16 ~~**11-34-5.1. Deriving support or maintenance from prostitution.** -- Any person,~~
17 ~~knowing a person to be a prostitute, who shall live or derive support or maintenance, in whole or~~
18 ~~in part, from the earnings or proceeds of prostitution, from moneys loaned, advanced to, or~~
19 ~~charged against the prostitute by any keeper, manager, or inmate of a house of ill fame or other~~
20 ~~place where prostitution is practiced or allowed, or who shall share in the earnings, proceeds or~~
21 ~~moneys, shall be punished by imprisonment in the adult correctional institutions for not less than~~
22 ~~one year nor more than five (5) years, or by a fine of not less than two thousand dollars (\$2,000)~~
23 ~~and not more than five thousand dollars (\$5,000), or both, and for every subsequent offense shall~~
24 ~~be punished by imprisonment for not less three (3) years and not more than ten (10) years, and by~~
25 ~~a fine of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars~~
26 ~~(\$10,000), or both. However, nothing in this section shall apply to a minor dependent of the~~
27 ~~prostitute.~~

28 ~~**11-34-6. Reputation testimony as evidence.** -- In the trial of any person charged with a~~
29 ~~violation of section 11-34-5, testimony concerning the reputation of the place where the violation~~
30 ~~occurred or of persons who frequent or reside in it shall be admissible in evidence in support of~~
31 ~~the charge.~~

32 ~~**11-34-7. Examination and treatment for venereal disease.** -- Any person convicted for~~
33 ~~any violation of section 11-34-5 or of any other statute relating to lewd or lascivious behavior or~~
34 ~~unlawful sexual intercourse, and who shall be confined or imprisoned in any correctional~~

1 ~~institution for more than ten (10) days, may be examined by the department of health for venereal~~
2 ~~disease, through duly appointed, licensed physicians as agents. Any person that is examined may~~
3 ~~be detained until the result of the examination is duly reported. If found with venereal disease in~~
4 ~~an infectious stage, the person shall be treated, and if a menace to the public, quarantined, in~~
5 ~~accordance with rules and regulations, not inconsistent with law, of the director of health, who is~~
6 ~~authorized to formulate and issue them. Refusal to comply with or obey the rules or regulations~~
7 ~~shall constitute a misdemeanor and be punishable by fine not to exceed two hundred fifty dollars~~
8 ~~(\$250), or by imprisonment not to exceed three (3) months, or both.~~

9 ~~**11-34-8. Loitering for indecent purposes.** — (a) It shall be unlawful for any person to~~
10 ~~stand or wander in or near any public highway or street, or any public or private place, and~~
11 ~~attempt to engage passersby in conversation, or stop or attempt to stop motor vehicles, for the~~
12 ~~purpose of prostitution or other indecent act, or to patronize, induce, or otherwise secure a person~~
13 ~~to commit any indecent act. Any person found guilty under this section shall be deemed guilty of~~
14 ~~a misdemeanor and shall be subject to imprisonment for a term not exceeding six (6) months, or~~
15 ~~by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars~~
16 ~~(\$1,000), or both.~~

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

20 ~~**11-34-8.1. Soliciting from motor vehicles for indecent purposes.** — (a) It shall be~~
21 ~~unlawful for any person, while an operator or passenger in a motor vehicle to stop, or attempt to~~
22 ~~stop another vehicle or pedestrian, or to engage or attempt to engage persons in another vehicle or~~
23 ~~pedestrians in conversation, for the purposes of prostitution or other indecent act, or to patronize,~~
24 ~~induce, or otherwise secure another person to commit any indecent act. Any person found guilty~~
25 ~~under this section shall be deemed guilty of a misdemeanor and shall be subject to imprisonment~~
26 ~~for a term not exceeding six (6) months and by a fine of not less than five hundred dollars (\$500)~~
27 ~~nor more than one thousand dollars (\$1,000).~~

28 ~~(b) Any person found guilty of a subsequent offense under this section shall be subject to~~
29 ~~imprisonment for a term of not more than one year and a fine of not less than seven hundred fifty~~
30 ~~dollars (\$750) nor more than one thousand five hundred dollars (\$1,500). No fine imposed under~~
31 ~~this section may be suspended.~~

32 ~~**11-34-8.2. Forfeiture of motor vehicles.** — (a) The motor vehicle being unlawfully~~
33 ~~operated as defined in section 11-34-8.1 by a person convicted of a second or subsequent offense~~
34 ~~of soliciting from a motor vehicle for indecent purposes pursuant to section 11-34-8.1, which~~

1 ~~vehicle is owned by the operator, may be seized by the law enforcement agency and forfeited at~~
2 ~~the discretion of the court.~~

3 ~~-(b) Property taken or detained under this section shall not be repleviable, but shall be~~
4 ~~deemed to be in the custody of the law enforcement agency making the seizure. The seizing~~
5 ~~agency shall sell the vehicle and grant the proceeds to the governor's justice commission for the~~
6 ~~purposes of rehabilitation and job training of those found guilty of prostitution and who are~~
7 ~~imprisoned. The seizing agency may retain ten percent (10%) of the proceeds of the sale up to a~~
8 ~~maximum of one hundred dollars (\$100), for the purposes of the administration of the sale.~~

9 ~~**11-34-9. Severability.** -- If any provision of this chapter or its application to any person~~
10 ~~or circumstances is held invalid, the invalidity does not affect other provisions or applications of~~
11 ~~the chapter which can be given effect without the invalid provision or application, and to this end~~
12 ~~the provisions of this chapter are declared to be severable.~~

13 ~~**11-34-10. Human Immunodeficiency Virus (HIV).** -- (a) Any person convicted of a~~
14 ~~violation of any provisions of this chapter shall be required to be tested for Human~~
15 ~~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~~
20 ~~case 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~~
25 ~~counseling by individuals trained by the department of health, as an HIV testing counselor, in~~
26 ~~accordance with regulations promulgated by the department of health; provided, that the~~
27 ~~counseling shall be in accordance with acceptable medical standards.~~

28 ~~-(d) All persons who are tested under this section, who are determined to be injecting~~
29 ~~drug users, shall be referred to appropriate sources of substance abuse treatment by the HIV~~
30 ~~testing 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~~

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

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

5 CHAPTER 34.1

6 COMMERCIAL SEXUAL ACTIVITY

7 **11-34.1-1. Definitions.** – The following words and phrases, when used in this chapter,
8 have the following meanings:

9 (1) "Intimate parts" means the genital or anal areas, groin, inner thigh, or buttock of any
10 person or the breast of a female.

11 (2) "Sexual act" means the intentional touching of the prostitute's or customer's intimate
12 parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended to
13 be for the purpose of sexual arousal, gratification. It shall include sexual intercourse, cunnilingus,
14 fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person's
15 body or by any object into the genital or anal openings of another person's body, or someone's
16 own body.

17 (3) "Commercial sexual activity" means any sexual act which is performed or promised
18 in return for a fee.

19 (4) "Fee" means any monetary amount of currency, tender or anything of value.

20 (5) "Prostitute" means any person who shall commit any commercial sexual activity for a
21 fee.

22 (6) "Customer" means any person who shall patronize, induce, or otherwise secure
23 another person to commit any commercial sexual activity in exchange for a fee.

24 **11-34.1-2. Prostitution.** – (a) Any person shall be guilty of the crime of prostitution if
25 he/she engages in any sexual act, whether performed or requested, in exchange for a fee.

26 (b) Any person found guilty of the crime of prostitution who shall be determined to be the
27 prostitute shall for a first (1st) offense be found guilty of a violation and shall be subjected to a
28 contribution to the victim's of crime indemnity fund (VCIF) of one hundred dollars (\$100), for a
29 second (2nd) offense may be subject to a fine of five hundred dollars (\$500), and for a third (3rd)
30 and subsequent offenses may be subject to up to six (6) months incarceration and a fine of up to
31 five hundred dollars (\$500) or both.

32 (c) Any person found guilty of the crime of prostitution who shall be determined to be the
33 customer shall be found guilty of a violation and, for a first (1st) offense shall be subject to a fine
34 of two hundred fifty dollars (\$250), for a second (2nd) offense may be guilty of a misdemeanor

1 and subject to a fine of five hundred dollars (\$500), and for a third (3rd) and subsequent offenses
2 may be subject to up to six (6) months incarceration and a fine of up to five hundred dollars
3 (\$500) or both.

4 **11-34.1-3. Loitering for prostitution.** – (a) It shall be unlawful for any person to stand
5 or wander in or near any public highway or street, or any public or private place, and attempt to
6 engage passersby in conversation, or stop or attempt to stop motor vehicles, for the purpose of
7 prostitution or other commercial sexual activity, or to patronize, induce, or otherwise secure a
8 person to commit any commercial sexual activity. Any person found guilty of the crime of
9 loitering for prostitution shall for a first (1st) offense be found guilty of a violation and shall be
10 subjected to a contribution to the victim's of crime indemnity fund of one hundred dollars (\$100),
11 for a second (2nd) offense may be guilty of a misdemeanor and subject to a fine of five hundred
12 dollars (\$500), and for a third (3rd) and subsequent offense may be subject to up to six (6) months
13 incarceration and a fine of up to five hundred dollars (\$500) or both.

14 **11-34.1-4. Soliciting from motor vehicles for indecent purposes – Forfeiture of**
15 **motor vehicle.** – (a) It shall be unlawful for any person, while an operator or passenger in a
16 motor vehicle to stop, or attempt to stop another vehicle or pedestrian, or to engage or attempt to
17 engage persons in another vehicle or pedestrians in conversation, for the purposes of prostitution
18 or other indecent act, or to patronize, induce, or otherwise secure another person to commit any
19 commercial sexual activity. Any person found guilty under this section shall be deemed guilty of
20 a violation and for the first (1st) offense shall be subject to a fine of two hundred fifty dollars
21 (\$250), for the second (2nd) offense shall be subject to a fine of five hundred dollars (\$500), and
22 for a third (3rd) and subsequent offense shall be subject to up to six (6) months incarceration and a
23 fine of up to five hundred dollars (\$500) or both.

24 (b) The motor vehicle being unlawfully operated as defined in section 11-34.1-4 by a
25 person convicted of a third (3rd) or subsequent offense of soliciting from a motor vehicle for
26 commercial sexual activity pursuant to section 11-34.1-4, and which vehicle is owned by the
27 operator, may be seized by the law enforcement agency and forfeited at the discretion of the
28 court, and the proceeds shall be deposited in the victim's of crime indemnity fund (VCIF).

29 **11-34.1-5. Permitting prostitution – Not allowed.** – (a) It shall be unlawful for any
30 person to knowingly permit, allow, or offer or agree to receive any person into any place,
31 structure, house, building, room, or business for the purpose of committing any commercial
32 sexual activity, or knowingly permit any person to remain in the premises for those purposes, or
33 to, in any way, aid or abet or participate in any of the acts or things enumerated in this chapter. It
34 shall also be unlawful for any person, knowing a person to be a prostitute, who shall live or derive

1 support or maintenance, in whole or in part, from the earnings or proceeds of commercial sexual
2 activity, from moneys loaned, advanced to, or charged against the prostitute by a landlord,
3 manager, owner of a spa or business or any other place where commercial sexual activity is
4 practiced or allowed, or who shall share in the earnings, proceeds or moneys shall be guilty of the
5 crime of permitting prostitution.

6 (b) Any person found guilty of the crime of permitting prostitution shall, for a first (1st)
7 offense, be guilty of a misdemeanor and be subjected to a fine of up to one thousand dollars
8 (\$1,000), and for a second (2nd) or subsequent offense, shall be guilty of a felony and shall be
9 subjected to a term of imprisonment of up to three (3) years and a fine of up to ten thousand
10 dollars (\$10,000), or both. In addition to the penalties set forth above, any person found guilty of
11 a second or subsequent offense shall be subject to the seizure and forfeiture of any property
12 deemed derived from the income of commercial sexual activity as set forth in chapter 21 of title
13 12.

14 **11-34.1-6. Reputation testimony as evidence.** – In the trial of any person charged with a
15 violation of section 11-34-5, testimony concerning the reputation of the place where the violation
16 occurred or of persons who frequent or reside in it shall be admissible in evidence in support of
17 the charge.

18 **11-34.1-7. Examination and treatment for venereal disease.** – Any person convicted
19 for any violation of section 11-34-5 or of any other statute relating to lewd or lascivious behavior
20 or unlawful sexual intercourse, and who shall be confined or imprisoned in any correctional
21 institution for more than ten (10) days, may be examined by the department of health for venereal
22 disease, through duly appointed, licensed physicians as agents. Any person that is examined may
23 be detained until the result of the examination is duly reported. If found with venereal disease in
24 an infectious stage, the person shall be treated, and if a menace to the public, quarantined, in
25 accordance with rules and regulations, not inconsistent with law, of the director of health, who is
26 authorized to formulate and issue them. Refusal to comply with or obey the rules or regulations
27 shall constitute a misdemeanor and be punishable by fine not to exceed two hundred fifty dollars
28 (\$250), or by imprisonment not to exceed three (3) months, or both.

29 **11-34.1-8. Human Immunodeficiency Virus (HIV).** -- (a) Any person convicted of a
30 violation of any provisions of this chapter shall be required to be tested for Human
31 Immunodeficiency Virus (HIV). No consent for the testing shall be required.

32 (b) The department of health shall maintain sites for providing both anonymous and
33 confidential HIV testing, and HIV counseling and referral. Each site, funded by the department of
34 health, shall offer free testing, counseling and referral for indigent parties and other individuals

1 without health insurance, offer a sliding scale for payment for all other individuals and, in the
2 case of confidential testing, screen for ability to pay through a third-party insurer. In the case of
3 nonfunded sites for HIV testing, organizations and/or institutions performing the test shall offer
4 free testing, counseling and referral for indigent parties and other individuals without health
5 insurance.

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

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

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

16 (2) Those persons who are injecting drug users and test negative for HIV infection shall
17 be referred, by the HIV testing counselor and/or attending practitioner, to the appropriate state
18 agency responsible for these services for earliest possible evaluation and treatment.

19 SECTION 3. 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 - PROSTITUTION AND LEWDNESS

1 This act would define the crime of prostitution to include any location, would create
2 punishments for individuals who would attempt to procure the services of a prostitute, and would
3 define the crime of permitting prostitution within a premise.

4 This act would take effect upon passage.

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