



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration  
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**Memorandum**

**To:** The Honorable Raymond E. Gallison, Jr.  
Chairman, House Finance Committee

The Honorable Daniel DaPonte  
Chairman, Senate Finance Committee

**From:** Thomas A. Mullaney *Thomas A. Mullaney*  
Executive Director/State Budget Officer

**Date:** April 13, 2016

**Re:** Amendment to Article 23 – Relating to Safe Harbor for Sexually Exploited Children

The Governor requests that Article 23 entitled “Relating to Safe Harbor for Sexually Exploited Children” be replaced with the new, attached version. Changes from the original version submitted on February 2, 2016 are described below:

**Section 2** – This section is amended as follows:

- One definition for “child or minor victim of sex trafficking or sexual exploitation” has been created by combining the original definitions §14-1.1-2 (c) and (d). The original §14-1.1-2(d) has been removed and the enumeration of all subsequent subparagraphs has been updated.

(Note: The original article inadvertently had two sections numbered §14-1.1-2; one was entitled “Purposes” and one entitled “Definitions.”)

- The original §14-1.1-3 entitled “Immunity from Prosecution for Prostitution” has been renumbered to §14-1.1-4 and has been amended to provide statutory immunity from prosecution for the crimes of prostitution (§ 11-34.1-2) or loitering for the purpose of prostitution (§11-34.1-3) for any child victim of sexual trafficking or sexual exploitation if the child is under the age of eighteen. The original § 14-1.1-3(b) has been entirely deleted to remove the language regarding affirmative defense for sixteen (16) or seventeen (17) year old victims of sex trafficking or sexual exploitation, as the immunity provision supersedes the need for a statutory permitted affirmative defense.

- The original §14-1.1-4 has been renumbered to §14-1.1-5, and subparagraph (b) has been amended to delete the reference to “...the department of public safety...” and insert in its place “...local law enforcement agencies...” This subparagraph is also amended to delete the word “...develop...” and insert in its place the word “...implement...”
- The original §14-1.1-5 has been renumbered to §14-1.1-6, and subparagraph (a) has been amended to delete the phrase “...has an affirmative duty...” and insert in its place the phrase “...shall report...” Also, subparagraph (c) has been amended to delete the phrase “...shall indicate...” and insert in its place the phrase “...shall provide, if needed,...” Additionally, in this subparagraph the phrase “...in accordance with normal child welfare practices...” has been deleted and inserted in its place is the phrase “...may file a dependency, neglect, and/or abuse petition in the family court.”

**Section 3** – This section has been renumbered to reflect the modifications made to the section. It also has been amended as follows:

- Clarification has been provided as to the definition of an “abused and/or neglected” child where the alleged perpetrator of the abuse is a parent or other caregiver [§ 40-11-2 (1)(i)] and an “abused and/or neglected” child where the alleged perpetrator of the abuse may be any person, regardless of that person’s relationship to the child, has sexually exploited the child [§ 40-11-2(1)(ii)(a) through (d)].
- In the new § 40-11-2 (1)(ii)(a), the terms “sex trafficking” and “or other sex acts” has been added, as has the reference to § 40-1.1-2.
- One definition for “victim of sex trafficking” has been created § 40-11-2(16) by deleting from the original § 40-11-2 subparagraph (q) the definition “victim of severe forms of trafficking”.

A copy of the replacement article is attached, with changes from the original version indicated by gray shading. If you have any questions regarding this amendment, please feel free to call me or my staff at 222-6300.

TAM: 17-Amend-5  
Attachment

cc: Sharon Reynolds Ferland, House Fiscal Advisor  
Stephen Whitney, Senate Fiscal Advisor  
Michael DiBiase, Director of Administration  
Jonathan Womer, Director, Office of Management and Budget  
Gregory Stack, Supervising Budget Analyst

## ARTICLE 23

### RELATING TO SAFE HARBOR FOR SEXUALLY EXPOITED CHILDREN

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

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

- (1) Assault with intent to commit murder, robbery, or rape;
- (2) Assault with a dangerous weapon;
- (3) Assault and battery;
- (4) Mayhem;
- (5) Indecent assault and battery on a child under thirteen (13) years of age;
- (6) Arson or statutory burning;
- (7) Kidnapping;
- (8) Robbery or larceny from that person;
- (9) Murder;
- (10) Manslaughter;
- (11) First or second degree sexual assault;
- (12) Child molestation, first or second degree;
- (13) The abominable and detestable crime against nature or assault with intent to commit the abominable and detestable crime against nature;
- (14) Driving under the influence of alcohol or drugs;
- (15) Refusal by a driver to submit to a chemical test for alcohol or drugs in the immediate aftermath of a collision;
- (16) Driving so as to endanger, resulting in death, pursuant to § 31-27-1;
- (17) Driving so as to endanger, resulting in personal injury, pursuant to § 31-27-1.1;

(18) Any other crime excluding motor vehicle offenses other than those enumerated in this section which results in personal injury or death; and

(19) Failure to stop by a driver in circumstances which result in the death of any person, pursuant to § 31-26-1-; and

(20) Sex trafficking of a minor pursuant to § 11-67-6.

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

CHAPTER 14-1.1

THE RHODE ISLAND SAFE HARBOR FOR

SEXUALLY EXPLOITED CHILDREN ACT

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

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

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

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

(c) To provide child victims of sex trafficking and sexual exploitation access to the criminal injuries compensation fund;

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

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

(b) "Child or minor" means a person under the age of eighteen (18):

(c) "Child or minor victim of sex trafficking or sexual exploitation" means a minor as defined in this chapter who has been recruited, employed, enticed, solicited, isolated, harbored, transported, provided, persuaded, obtained, induced or maintained by force, fraud or coercion for the purposes of performing commercial sex acts;

(d) "Criminal injuries compensation fund" means the financial compensation fund for victims of violent crime enumerated in Chapter 25 of Title 12 of the Rhode Island General laws and administered by the department of the general treasurer;

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

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

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

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

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

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

**§ 14-1.1-6. Reporting child victims of sex trafficking and sexual exploitation as victims of child abuse.** – Any child who is believed to be a victim of sex trafficking or sexual exploitation shall be reported to the department of children, youth and families as an alleged victim of child abuse or neglect in accordance with the provisions of Chapter 11 of Title 40.

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

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

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

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

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

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

(1) "Abused and/or neglected child" means:

(i) a child whose physical or mental health or welfare is harmed or threatened with harm when his or her parent or other person responsible for his or her welfare:

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

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

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

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

~~(v)(e)~~ Fails to provide the child with a minimum degree of care or proper supervision or guardianship because of his or her unwillingness or inability to do so by situations or conditions such as, but not limited to, social problems, mental incompetency, or the use of a drug, drugs, or alcohol to the extent that the parent or other person responsible for the child's welfare loses his or her ability or is unwilling to properly care for the child; or

~~(vi)(f)~~ Abandons or deserts the child; or

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

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

~~(viii)(b)~~ Sexually exploits the child in that the person allows, permits, encourages or engages in the obscene or pornographic photographing, filming or depiction of the child in a setting which taken as a

whole suggests to the average person that the child is about to engage in or has engaged in, any sexual act, or which depicts any such child under eighteen (18) years of age, performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or

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

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

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

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

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

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

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

~~(6)~~(7) "Institutional child abuse and neglect" means situations of known or suspected child abuse or neglect where the person allegedly responsible for the abuse or neglect is a foster parent or the employee of a public or private residential child care institution or agency; or any staff person providing out-of-home care or situations where the suspected abuse or neglect occurs as a result of the institution's practices, policies, or conditions.

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



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

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

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

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

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

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

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

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

SECTION 4. This article shall take effect upon passage.