



GOV. MSG. NO. 1319

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 03, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

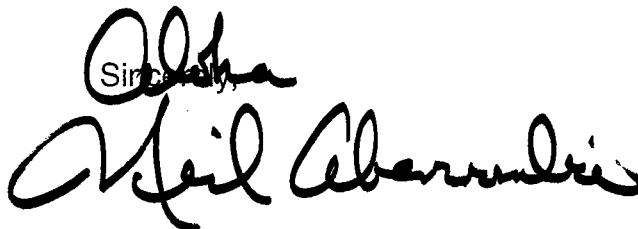
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 03, 2012, the following bill was signed into law:

SB2576 SD1 HD3 CD1

RELATING TO PROSTITUTION.
Act 216 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor
JUL 3 2012
on _____

ACT 216

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

S.B. NO. 2576
S.D. 1
H.D. 3
C.D. 1

A BILL FOR AN ACT

RELATING TO PROSTITUTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to authorize a
2 person convicted of committing the offense of prostitution to
3 file a motion to vacate the conviction under certain
4 circumstances and to establish procedures for the motion to
5 vacate.

6 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
7 amended by adding a new section to part I to be appropriately
8 designated and to read as follows:

9 "§712- Prostitution; motion to vacate conviction. (1)
10 A person convicted of committing the offense of prostitution
11 under section 712-1200, loitering for the purpose of engaging in
12 or advancing prostitution under section 712-1206, street
13 solicitation of prostitution in designated areas under section
14 712-1207, or convicted of a lesser offense when originally
15 charged with a violation of section 712-1200, 712-1206, or
16 712-1207, may file a motion to vacate the conviction if the
17 defendant's participation in the offense was the result of the
18 person having been a victim of:



- 1 (a) Promoting prostitution in the first degree under
2 section 712-1202; or
- 3 (b) A severe form of trafficking as defined in title 22
4 United States Code section 7102(13).
- 5 (2) A motion filed under this section shall:
- 6 (a) Be in writing;
- 7 (b) Be signed and sworn to by the petitioner;
- 8 (c) Be made within six years after the date that the
9 person ceases to be a victim as described in
10 subsection (1), subject to reasonable concerns for the
11 safety of the defendant, family members of the
12 defendant, or other victims of the trafficking that
13 may be jeopardized by the bringing of a motion, or for
14 other reasons consistent with the purpose of this
15 section;
- 16 (d) Describe all the grounds and evidence for vacation of
17 a conviction which are available to the petitioner and
18 of which the petitioner has or by the exercise of
19 reasonable diligence should have knowledge, and
20 provide copies of any official documents showing that
21 the defendant is entitled to relief under this
22 section; and



1 (e) Be subject to the review and written approval of the
2 state agency or county prosecutor responsible for
3 prosecuting the offense that is the subject of the
4 motion to vacate conviction.

5 (3) The court shall hold a hearing on a motion filed under
6 this section if the motion satisfies the requirements of
7 subsection (2); provided that the court may dismiss a motion
8 without a hearing if the court finds that the motion fails to
9 assert grounds on which relief may be granted.

10 (4) If the court grants a motion filed under this section,
11 the court shall vacate the conviction.

12 (5) A person making a motion to vacate pursuant to this
13 section has the burden of proof by a preponderance of the
14 evidence.

15 (6) This section shall not apply to a motion to vacate a
16 conviction under this chapter for:

17 (a) Promoting prostitution under section 712-1202 or 712-
18 1203; or

19 (b) A person who pays, agrees to pay or offers a fee to
20 another person to engage in sexual conduct.

21 (7) For the purposes of this section:

1 "Victim of trafficking" and "victim of a severe form of
2 trafficking" shall have the same meaning as in title 22 United
3 States Code section 7102."

4 SECTION 3. Section 712-1200, Hawaii Revised Statutes, is
5 amended by amending subsection (4) to read as follows:

6 "(4) A person convicted of committing the offense of
7 prostitution shall be sentenced as follows:

8 (a) For the first offense, when the court has not deferred
9 further proceedings pursuant to chapter 853, a
10 [~~mandatory~~] minimum fine of \$500 and the person may be
11 sentenced to a term of imprisonment of not more than
12 thirty days or probation; provided that in the event
13 the convicted person defaults in payment of the \$500
14 fine, and the default was not contumacious, the court
15 may sentence the person to perform services for the
16 community as authorized by section 706-605(1).

17 (b) For any subsequent offense, a [~~mandatory~~] minimum fine
18 of \$500 and a term of imprisonment of thirty days or
19 probation, without possibility of deferral of further
20 proceedings pursuant to chapter 853 and without
21 possibility of suspension of sentence.



1 (c) For the purpose of this subsection, if the court has
2 deferred further proceedings pursuant to chapter 853,
3 and notwithstanding any provision of chapter 853 to
4 the contrary, the defendant shall not be eligible to
5 apply for expungement pursuant to section 831-3.2
6 until four years following discharge. A plea
7 previously entered by a defendant under section 853-1
8 for a violation of this section shall be considered a
9 prior offense. When the court has ordered a sentence
10 of probation, the court may impose as a condition of
11 probation that the defendant complete a course of
12 prostitution intervention classes; provided that the
13 court may only impose such condition for one term of
14 probation."

15 SECTION 4. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

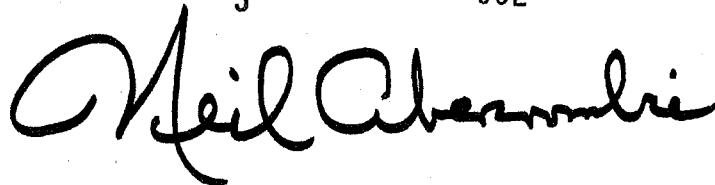
18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect on July 1, 2012.

S.B. NO.

2576
S.D. 1
H.D. 3
C.D. 1

APPROVED this 3 day of JUL, 2012

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII