

JAN 20 2012

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 judgment under certain circumstances
4 and to establish procedures for the motion to vacate.

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

8 "§712- Prostitution; motion to vacate judgment. (1) A
9 person convicted of committing the offense of prostitution under
10 section 712-1200, loitering for the purpose of engaging in or
11 advancing prostitution under section 712-1206, street
12 solicitation of prostitution in designated areas under section
13 712-1207, or convicted of a lesser offense when originally
14 charged with a violation of section 712-1200, 712-1206, or 712-
15 1207, may file a motion to vacate the conviction if the
16 defendant's participation in the offense was the result of the
17 person having been a victim of:



- 1 (a) Promoting prostitution in the first degree under
2 section 712-1202 or promoting prostitution in the
3 second degree under section 712-1203;
- 4 (b) A severe form of trafficking in persons as defined in
5 title 22 United States Code section 7102(13); or
- 6 (c) A crime as set forth in title 18 United States Code
7 section 2422, section 2423(a), or section 2425.
- 8 (2) A motion filed under this section shall:
- 9 (a) Be in writing;
- 10 (b) Be made within a reasonable period of time after the
11 person ceases to be a victim as described in
12 subsection (1), subject to reasonable concerns for the
13 safety of the defendant, family members of the
14 defendant, or other victims of the trafficking that
15 may be jeopardized by the bringing of a motion, or for
16 other reasons consistent with the purpose of this
17 section; and
- 18 (c) Describe the evidence and provide copies of any
19 official documents showing that the defendant is
20 entitled to relief under this section.
- 21 (3) The court shall hold a hearing on a motion filed under
22 this section if the motion satisfies the requirements of



1 subsection (2); provided that the court may dismiss a motion
2 without a hearing if the court finds that the motion fails to
3 assert grounds on which relief may be granted.

4 (4) Official documentation of the defendant's status as a
5 victim of trafficking or a victim of a severe form of
6 trafficking from a federal, state, or local government agency or
7 a sworn statement from a trained professional staff member of a
8 victim services organization, an attorney, a member of the
9 clergy, or a medical or other health professional from whom the
10 defendant has sought services to address the effects of having
11 been trafficked shall create a presumption that the person's
12 participation in the offense of prostitution was a result of
13 having been a victim of trafficking or a victim of a severe form
14 of trafficking, but shall not be required for granting a
15 petition under this subsection.

16 (5) If the court grants a motion filed under this section,
17 the court shall vacate the conviction and dismiss the accusatory
18 pleading, and may take additional action as is appropriate in
19 the circumstances or as justice requires.

20 (6) A person making a motion to vacate pursuant to this
21 section has the burden of proof by a preponderance of the
22 evidence.



1 (7) This section shall not apply to a motion to vacate a
2 conviction under this chapter for:

3 (a) Promoting prostitution; or

4 (b) A person who offers a fee to engage in sexual conduct
5 with another person.

6 (8) For the purposes of this section:

7 "Official documentation" includes a police report, court
8 record, or affidavit generated from a federal, state, or local
9 government agency; a victim services organization that has
10 served the person as a victim of trafficking; an attorney; a
11 member of the clergy; or a medical or health care professional.

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

15 SECTION 3. 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 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect upon its approval.

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Report Title:

Prostitution; Motion to Vacate Judgment

Description:

Authorizes a person convicted of committing the offense of prostitution to file a motion to vacate the judgment under certain circumstances; establishes procedures for the motion to vacate.

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