
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 be appropriately designated
8 and to read as follows:

9 "§712- Prostitution; motion to vacate judgment. (1) A
10 person convicted of committing the offense of prostitution under
11 section 712-1200, loitering for the purpose of engaging in or
12 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 a six years of time after the person
- 9 ceases to be a victim as described in subsection (1),
- 10 subject to reasonable concerns for the safety of the
- 11 defendant, family members of the defendant, or other
- 12 victims of the trafficking that may be jeopardized by
- 13 the bringing of a motion, or for other reasons
- 14 consistent with the purpose of this section; and
- 15 (d) Describe all the grounds and evidence for vacation of
- 16 a conviction which are available to the petitioner and
- 17 of which the petitioner has or by the exercise of
- 18 reasonable diligence should have knowledge, and
- 19 provide copies of any official documents showing that
- 20 the defendant is entitled to relief under this
- 21 section.



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

6 (4) Official documentation of the defendant's status as a
7 victim of trafficking or a victim of a severe form of
8 trafficking from a federal, state, or local law enforcement
9 agency shall create a presumption that the person's
10 participation in the offense of prostitution was a result of
11 having been a victim of trafficking or a victim of a severe form
12 of trafficking, but shall not be required for granting a
13 petition under this subsection.

14 (5) If the court grants a motion filed under this section,
15 the court shall vacate the conviction.

16 (6) A person making a motion to vacate pursuant to this
17 section has the burden of proof by a preponderance of the
18 evidence.

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

21 (a) Promoting prostitution under section 712-1202 or 712-
22 1203; or



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

3 (8) For the purposes of this section:

4 "Official documentation" includes a police report, court
5 record, or affidavit generated from a federal, state, or local
6 law enforcement agency.

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

10 SECTION 3. Section 712-1200, Hawaii Revised statutes is
11 amended to read as follows:

12 **"§712-1200 Prostitution.** (1) A person commits the
13 offense of prostitution if the person:

14 (a) Engages in, or agrees or offers to engage in, sexual
15 conduct with another person for a fee; or

16 (b) Pays, agrees to pay, or offers to pay a fee to another
17 to engage in sexual conduct.

18 (2) As used in subsection (1), "sexual conduct" means
19 "sexual penetration," "deviate sexual intercourse," or "sexual
20 contact," as those terms are defined in section 707-700.

21 (3) Prostitution is a petty misdemeanor.



1 (4) A person convicted of committing the offense of
2 prostitution shall be sentenced as follows:

3 (a) For the first offense, when the court has not deferred
4 further proceedings pursuant to chapter 853, a
5 mandatory fine of [~~\$500~~]\$1,000 and the person may be
6 sentenced to a term of imprisonment of not more than
7 thirty days or probation; provided that in the event
8 the convicted person defaults in payment of the \$500
9 fine, and the default was not contumacious, the court
10 may sentence the person to perform services for the
11 community as authorized by section 706-605(1).

12 (b) For any subsequent offense, a mandatory fine of [~~\$500~~]
13 \$1,000 and a term of imprisonment of thirty days or
14 probation, without possibility of deferral of further
15 proceedings pursuant to chapter 853 and without
16 possibility of suspension of sentence.

17 (c) For the purpose of this subsection, if the court has
18 deferred further proceedings pursuant to chapter 853,
19 and notwithstanding any provision of chapter 853 to
20 the contrary, the defendant shall not be eligible to
21 apply for expungement pursuant to section 831-3.2
22 until four years following discharge. A plea



1 previously entered by a defendant under section 853-1
2 for a violation of this section shall be considered a
3 prior offense. When the court has ordered a sentence
4 of probation, the court may impose as a condition of
5 probation that the defendant complete a course of
6 prostitution intervention classes; provided that the
7 court may only impose such condition for one term of
8 probation.

9 (5) This section shall not apply to any member of a police
10 department, a sheriff, or a law enforcement officer acting in
11 the course and scope of duties.

12 SECTION 4. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 5. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect on July 1, 2050.



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 conviction under certain circumstances. Establishes procedures for the motion to vacate. Effective July 1, 2050. (SB2576 HD2)

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