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.

Report Title:
Prostitution; Motion to Vacate Conviction

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. Establishes minimum fines for the commission of the first and any subsequent offense of prostitution. (CD1)

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