

JAN 18 2019

## A BILL FOR AN ACT

RELATING TO PROSTITUTION.

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

SECTION 1. Section 712-1209.6, Hawaii Revised Statutes, is amended to read as follows:

"§712-1209.6 Prostitution; motion to vacate conviction.

(a) A person convicted of committing the offense of prostitution under section 712-1200, loitering for the purpose of engaging in or advancing prostitution under section 712-1206, street solicitation of prostitution in designated areas under section 712-1207, or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206, or 712-1207, may file a motion to vacate the conviction if the ~~[defendant's participation in the offense was the result of the person having been a victim of:~~

~~(a) Sex trafficking under section 712-1202 or promoting prostitution under section 712-1203; or~~

~~(b) A severe form of trafficking in persons as defined in title 22 United States Code section 7102(9)(A).]~~

defendant is not charged with a criminal offense or



1 subsequently convicted of any offense under the penal  
2 code within twelve months after the date of the  
3 original conviction of committing the offense under  
4 section 712-1200, 712-1206, or 712-1207 or a lesser  
5 offense when originally charged with a violation of  
6 section 712-1200, 712-1206, or 712-1207.

7 ~~[(2) A motion filed under this section shall:~~

8 ~~(a) Be in writing;~~

9 ~~(b) Be signed and sworn to by the petitioner;~~

10 ~~(c) Be made within six years after the date that 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;~~

18 ~~(d) Describe all the grounds and evidence for vacation of~~  
19 ~~a conviction which are available to the petitioner and~~  
20 ~~of which the petitioner has or by the exercise of~~  
21 ~~reasonable diligence should have knowledge, and~~



1 ~~provide copies of any official documents showing that~~  
2 ~~the defendant is entitled to relief under this~~  
3 ~~section; and~~

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

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

13 ~~(4) If the court grants a motion filed under this~~  
14 ~~section,]~~ to review the defendant's record over the twelve  
15 months after the date of the original conviction of committing  
16 the offense under section 712-1200, 712-1206, or 712-1207 or a  
17 lesser offense when originally charged with a violation of  
18 section 712-1200, 712-1206, or 712-1207, and if the court finds  
19 that the defendant has not been convicted of any offense under  
20 the penal code within this twelve month period and is not



1 currently charged for any criminal violation, the court shall  
2 vacate the conviction.

3 ~~[(5) A person making a motion to vacate pursuant to this~~  
4 ~~section has the burden of proof by a preponderance of the~~  
5 ~~evidence.~~

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

8 ~~(a) Sex trafficking under section 712-1202;~~

9 ~~(b) Promoting prostitution under section 712-1203; or~~

10 ~~(c) A person who pays, agrees to pay or offers a fee to~~  
11 ~~another person to engage in sexual conduct.] "~~

12 SECTION 2. 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 3. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect upon its approval.

18 INTRODUCED BY:

B. D. Dyl.  
by request



# S.B. NO. 781

**Report Title:**

Prostitution; Motion to Vacate

**Description:**

Allows a defendant convicted of certain prostitution offenses to file a motion to vacate the conviction if the defendant is not subsequently convicted of any offense under the penal code within twelve months after the date of the original conviction and is not facing current criminal charges. Repeals certain requirements pertaining to filing a motion to vacate, including the burden of proof, and exclusions of certain convictions of certain prostitution offenses.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

