

ACT 216

S.B. NO. 2576

A Bill for an Act Relating to Prostitution.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

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

**“§712- Prostitution; motion to vacate conviction.** (1) 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) Promoting prostitution in the first degree under section 712-1202; or
  - (b) A severe form of trafficking as defined in title 22 United States Code section 7102(13).
- (2) A motion filed under this section shall:
- (a) Be in writing;
  - (b) Be signed and sworn to by the petitioner;
  - (c) Be made within six years after the date that the person ceases to be a victim as described in subsection (1), subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of the trafficking that may be jeopardized by the bringing of a motion, or for other reasons consistent with the purpose of this section;
  - (d) Describe all the grounds and evidence for vacation of a conviction which are available to the petitioner and of which the petitioner has or by the exercise of reasonable diligence should have knowledge,

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

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

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

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

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

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

- (a) Promoting prostitution under section 712-1202 or 712-1203; or
- (b) A person who pays, agrees to pay or offers a fee to another person to engage in sexual conduct.

(7) For the purposes of this section:

“Victim of trafficking” and “victim of a severe form of trafficking” shall have the same meaning as in title 22 United States Code section 7102.”

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

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

- (a) For the first offense, when the court has not deferred further proceedings pursuant to chapter 853, a [~~mandatory~~] minimum fine of \$500 and the person may be sentenced to a term of imprisonment of not more than thirty days or probation; provided that in the event the convicted person defaults in payment of the \$500 fine, and the default was not contumacious, the court may sentence the person to perform services for the community as authorized by section 706-605(1).
- (b) For any subsequent offense, a [~~mandatory~~] minimum fine of \$500 and a term of imprisonment of thirty days or probation, without possibility of deferral of further proceedings pursuant to chapter 853 and without possibility of suspension of sentence.
- (c) For the purpose of this subsection, if the court has deferred further proceedings pursuant to chapter 853, and notwithstanding any provision of chapter 853 to the contrary, the defendant shall not be eligible to apply for expungement pursuant to section 831-3.2 until four years following discharge. A plea previously entered by a defendant under section 853-1 for a violation of this section shall be considered a prior offense. When the court has ordered a sentence of probation, the court may impose as a condition of probation that the defendant complete a course of prostitution intervention classes; provided that the court may only impose such condition for one term of probation.”

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

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**SECTION 5.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved July 3, 2012.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.