

A BILL FOR AN ACT

RELATING TO PROSTITUTION.

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

SECTION 1. Ensuring the health, safety, and well-being of people in Hawaii, including sex workers, is a priority of the State. However, statutes relating to prostitution often cause harm to people without the justification of a clear public purpose.

To address these problems, this Act repeals from these statutes, criminal sanctions against persons whose conduct causes no harm to others such as consensual adult prostitution and the promotion of adult prostitution. This includes repealing vague statutory language relating to the solicitation of minors from section 712-1200, Hawaii Revised Statutes (HRS), relating to the offense of prostitution, because these situations are better addressed by laws prohibiting statutory rape. This Act also amends section 712-1203, HRS, relating to promoting prostitution, section 712-1206, HRS, relating to loitering for the purpose of engaging in or advancing prostitution, section 712-1208, HRS, relating to promoting travel for prostitution, and section 712-1209.5, HRS, relating to habitual solicitation of

prostitution, to eliminate penalties for conduct that causes no harm. Finally, this Act amends section 712-1209.6, HRS, relating to prostitution and motions to vacate conviction, to vacate all convictions that were obtained for conduct that is decriminalized by this Act.

SECTION 2. Section 712-1200, Hawaii Revised Statutes, is amended to read as follows:

"§712-1200 Prostitution. (1) A person commits [~~the offense~~] an act of prostitution if the person:

- (a) Engages in, or agrees or offers to engage in, sexual conduct with another person in return for a fee; or
- (b) Pays, agrees to pay, or offers to pay a fee to another to engage in sexual conduct.

(2) As used in this section:

"Minor" means a person who is less than eighteen years of age.

"Sexual conduct" means "sexual penetration", "deviate sexual intercourse", or "sexual contact", as those terms are defined in section 707-700, or "sodomasochistic abuse" as defined in section 707-752.

(3) Prostitution is [~~a petty misdemeanor; provided that:~~] not an offense provided that the persons are eighteen years of age or older; but

~~[(a) If] if the person who ~~[commits the offense]~~ engages in
prostitution under subsection (1) (a) is a minor,
prostitution is a violation~~;~~ and~~

~~(b) If the person who commits the offense under subsection
(1) (b) does so in reckless disregard of the fact that the
other person is a victim of sex trafficking, prostitution
is a class C felony.~~

~~(4) A person convicted of committing the offense of
prostitution as a petty misdemeanor shall be sentenced as follows:~~

~~(a) For the first offense, when the court has not deferred
further proceedings pursuant to chapter 853, a fine of not
less than \$500 but not more than \$1,000 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 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 fine of not less than \$500
but not more than \$1,000 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 the condition for one term of probation.~~

(5) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer acting in the course and scope of duties, unless engaged in sexual penetration or sadomasochistic abuse, which if applicable may be charged under section 707-730, 707-731, 707-732, 707-733, or 707-733.6.

[+6+] (4) A minor may be taken into custody by any police officer without order of the judge when there are reasonable grounds to believe that the minor has violated subsection (1)(a). The minor shall be released, referred, or transported pursuant to section 571-31(b). The minor shall be subject to the jurisdiction of the family court pursuant to section 571-11(1), including for the

purposes of custody, detention, diversion, and access to services and resources."

SECTION 3. Section 712-1209.6, Hawaii Revised Statutes, is amended to read as follows:

"§712-1209.6 Prostitution; motion to vacate conviction. (1)

All convictions for violations of sections 712-1200, 712-1203, 712-1206, and 712-1208 are vacated. All open cases, outstanding warrants and any other issues related to these statutes are moot as of the date of enactment of this section.

~~[(2) 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).~~

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

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

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

SECTION 4. Section 712-1203, Hawaii Revised Statutes, is repealed.

~~["**§712-1203 Promoting prostitution.** (1) A person commits the offense of promoting prostitution if the person knowingly advances or profits from prostitution.~~

~~(2) Promoting prostitution is a class B felony."]~~

SECTION 5. Section 712-1206, Hawaii Revised Statutes, is repealed.

~~["**§712-1206 Loitering for the purpose of engaging in or advancing prostitution.** (1) For the purposes of this section, "public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building which fronts on any of the aforesaid places, or a motor vehicle in or on any such place.~~

~~(2) Any person who remains or wanders about in a public place and repeatedly beckons to or repeatedly stops, or repeatedly attempts~~

~~to stop, or repeatedly attempts to engage passers by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons for the purpose of committing the crime of prostitution as that term is defined in section 712-1200, shall be guilty of a violation.~~

~~(3) Any person who remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to engage passers by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons for the purpose of committing the crime of advancing prostitution as that term is defined in section 712-1201(1) is guilty of a petty misdemeanor."]~~

SECTION 6. Section 712-1208, Hawaii Revised Statutes, is repealed.

~~["**~~§712-1208~~** Promoting travel for prostitution. (1) A person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be prostitution if occurring in the State.~~

~~(2) "Travel services" has the same meaning as in section 468L-1.~~

~~(3) Promoting travel for prostitution is a class C felony."]~~

SECTION 7. Section 712-1209.5, Hawaii Revised Statutes, is repealed.

~~["§712-1209.5] Habitual solicitation of prostitution. (1) A person commits the offense of habitual solicitation of prostitution if the person is a habitual prostitution offender and pays, agrees to pay, or offers to pay a fee to another person to engage in sexual conduct.~~

~~(2) For the purposes of this section, a person has the status of a "habitual prostitution offender" if the person, at the time of the conduct for which the person is charged, had two or more convictions within ten years of the instant offense for:~~

- ~~(a) Prostitution, in violation of section 712-1200(1)(b);~~
- ~~(b) Street solicitation of prostitution, in violation of section 712-1207(1)(b);~~
- ~~(c) Habitual solicitation of prostitution, in violation of this section;~~
- ~~(d) An offense of any other jurisdiction that is comparable to one of the offenses in paragraph (a), (b), or (c); or~~
- ~~(e) Any combination of the offenses in paragraph (a), (b), (c), or (d).~~

~~A conviction for purposes of this section is a judgment on the verdict or a finding of guilt, or a plea of guilty or nolo contendere. The convictions must have occurred on separate dates and be for separate incidents on separate dates. At the time of the instant offense, the conviction must not have been expunged by pardon, reversed, or set aside.~~

~~(3) Habitual solicitation of prostitution is a class C felony."]~~

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2017.

INTRODUCED BY: _____

Report Title:

Repeals Penalties for Prostitution and Related Offenses;
Consensual Adult Prostitution; Motion to Vacate the Conviction
of Prostitution Offenses

Description:

Repeals the penalties for consensual adult prostitution and
promotion of adult prostitution. Vacates convictions for
conduct that is decriminalized.

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